Calendar No. 665

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-485

# IMMIGRATION REFORM AND CONTROL

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## REPORT

OF THE

## COMMITTEE ON THE JUDICIARY
## UNITED STATES SENATE

ON

## S. 2222

WITH

## ADDITIONAL AND MINORITY VIEWS

JUNE 30 (legislative day, JUNE 8), 1982.—Ordered to be printed

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Mr. SIMPSON, from the Committee on the Judiciary
submitted the following

## REPORT

together with

## ADDITIONAL AND MINORITY VIEWS

[To accompany S. 2222]

The Committee on the Judiciary, to which was referred the bill (S. 2222) to amend the Immigration and Nationality Act, and for other purposes, having considered the same, reports favorably thereon, with amendments, and recommends that the bill as amended do pass.

## I. PURPOSE AND SUMMARY

The Committee bill is intended to increase control over both illegal and legal immigration.

In order to reduce the primary incentive for illegal immigration, the availability of U.S. employment, the bill makes unlawful the knowing employment, or the recruitment or referral for a fee, of illegal aliens; provides for a system to verify work eligibility; and establishes appropriate civil and criminal penalties for violations. In addition, the bill establishes new crimes for certain activities involving fraudulent documents and for bringing illegal aliens to the U.S.; states the sense of Congress that resources for conventional enforcement should be increased; requires the imposition of fees for use of Immigration and Naturalization Service border and other facilities; provides for more efficient adjudication of exclusion, deportation, and asylum cases; and prohibits adjustments of status by visa abusers.

S. 2222 also reforms legal immigration so that it will better serve the national interest. The current system of numerical limitations is revised in order to reduce the growth in the number of immigrants to the U.S., to reserve limited family reunification visas for the closest family members, to increase the immigration opportunity of aliens who

have no close relatives in the U.S. but who have needed skills, and to preserve diversity in immigration flows. The labor certification requirement is amended to permit certification based on general labor market information, rather than only on an analysis of the impact of specific aliens in specific jobs, and to require a reasonable training effort by employers. Special immigration benefits are provided for certain children of employees of international organizations, surviving spouses of deceased such employees, and retired such employees, who have been in the U.S. many years.

The bill also amends certain provisions of the law relating to nonimmigrants. The H–2 temporary worker program is revised in order to assist agricultural employers in adjusting to the reduced availability of illegal foreign workers. Foreign students are prohibited from adjusting their status to permanent resident and from obtaining an immigrant visa or certain work-related nonimmigrant visas until they have returned home for 2 years. A pilot visa waiver program is authorized for five countries with low rates of visa denial and exclusion.

In addition the bill provides for legal permanent resident status for certain illegal aliens who entered prior to January 1, 1978 and for legal temporary resident status for illegal aliens who entered prior to January 1, 1982, with an opportunity to adjust to permanent status after 2 years under certain conditions, including evidence of a minimum English language competence or of enrollment in a program to acquire such competence.

Finally, the bill requires certain reports from the President to Congress with respect to the employer sanctions provisions, legal immigration, the legalization program, the H–2 program, and the visa waiver program.

## II. GENERAL STATEMENT

### A. Introduction

No other country in the world attracts potential migrants as strongly as the United States of America. No other country approaches the United States in the number of legal immigrants accepted or refugees permanently resettled. The Committee believes that most Americans are proud of both the reputation and the history of this country as a land of opportunity and refuge. We believe that this reputation and history have generally had a positive effect on America.

However, current U.S. immigration policy is no longer adequate to deal with modern conditions, including the growing immigration pressure on the United States. Immigration to the U.S. is "out of control" and it is perceived that way at all levels of government and by the American people—indeed by people all over the world.

The Committee believes that reform is imperative. This does not mean the U.S. must isolate itself from the rest of the world. Immigration can continue to serve the national interest, if the law is reasonably amended to be appropriate for contemporary conditions—and if the law can be enforced. This will in no way be inconsistent with American tradition. Immigration to the United States has been limited in various ways for more than a century and has been subject to forms of numerical limitation for over sixty years.

The moving words on the Statue of Liberty are cited in nearly all discussions of U.S. immigration policy and are certainly consistent with the traditional hospitality and charity of the American people. It is imperative, however, that Americans perceive that this great country is no longer one of vast, undeveloped space and resources, with a relatively small population.

In an earlier time, the nation could welcome millions of newcomers, many of whom brought few skills, but did bring a willingness to work hard. In a smaller America with a simpler, labor intensive economy and a labor shortage, that was often quite enough—that, plus their intense drive to become Americans.

Immigrants can still greatly benefit America, but only if they are limited to an appropriate number and selected within that number on the basis of immediate family reunification and skills which would truly serve the interest of a highly developed nation.

## B. The National Interest

The Committee believes that the paramount obligation of any nation's government, indeed the very reason for its existence and the justification for its power, is to promote the national interest—the long-term welfare of the majority of its citizens and their descendants.

Consequently, we believe that the formulation of U.S. immigration policy must involve a judgment of what would promote the interests of American citizens—as they are at the present time and as they and their descendants are likely to be in the foreseeable future. An immigration policy which would be detrimental to the long-term well-being of the American people should not be adopted.

We certainly do not mean to suggest that charity and compassion should not play a role in U.S. immigration policy. Even if a particular charitable policy would not promote the national interest, as long as it would not be harmful to that interest and was supported by a majority of the American people, then it should of course be adopted.

Because the well-being of individuals is affected by both economic and noneconomic circumstances, an immigration policy which serves the national interest must be based on an analysis of both the economic and noneconomic impacts of immigration. Economic variables include unemployment, wages, working conditions, productivity and per capita Gross National Product (GNP). Noneconomic matters include population size, other demographic phenomena, and such cultural elements as values, customs, institutions, and degree of unity or of tension between subcultures.

There is an additional component of the national interest which a realistic analysis must not ignore. This is related to the ability of human beings to experience change without discomfort and it exists regardless of whether any objectively adverse impacts occur. Although the desire of immigrants from other lands to change their lives totally by coming to the United States is obviously greater than their reluctance to leave their homes, the ability of the American people to welcome aliens into their day-to-day life experiences has limits. These limits depend in part on the degree and kind of change which will be caused in their lives. We see the evidence that if the newcomers to a community do not excessively disrupt or change the attributes of the

community which make it familiar to its residents and uniquely their "home" (as compared with foreign areas, which they may respect highly but which are not "home" to them), then the newcomers may well be welcome, especially if they make positive contributions to the community's economic and general well-being. On the other hand, it is seen that if the newcomers remain "foreign," they may not be welcome, especially if they seek to carve out separate enclaves to embrace only their own language and culture and if their numbers and the areas of the community which they directly affect are great. This should not be so in the "ideal" world, but it is real.

### C. Current Problems

In the last five years total legal permanent admissions to the U.S. increased from a little over 450,000 in 1976 to 800,000 in 1980 (if the 135,000 Cubans and Haitians entering that year are counted). As recently as 1965 the total was under 300,000.

During the same five-year period, the category of "immediate relatives" of U.S. citizens grew 40 percent—from 114,000 to 152,000. Under present law there are no numerical limits on this type of family reunification. In this same period, refugee admissions have ranged from 5,000 in 1977 to over 200,000 in 1980, four times the 50,000 level specified as the "normal" flow in the Refugee Act of 1980. The U.S. today is taking in more legal immigrants and refugees for permanent resettlement than the rest of the world combined. It is because of these two categories, "immediate relatives" and refugees, which are not subject to firm annual numerical limits, that immigration to the U.S. has reached so high a level. Under current law the "normal" level of *legal* immigration is probably between 525,000 and 625,000 (if the number of refugees and asylees continues to be in the range of 100,000 to 200,000) plus the growth in the number of "immediate relatives." The level of refugee admissions is set by the President after consultation with this Committee and with the Committee on the Judiciary of the House of Representatives. As a result of the maturing of the consultation process which has occurred in the period since the enactment of the Refugee Act of 1980, the Committee now believes that the process provides an appropriate degree of control over refugee admissions.

In addition, hundreds of thousands of illegal immigrants now enter the U.S. every year. Some estimate the net annual inflow at over 500,000. The present inflow is probably substantially higher than it was 10 years ago. At least some indication of this can be found in the dramatically increased number of apprehensions. In 1967 the number was 162,000. In 10 years it had increased to over one million.

Just four years ago applicants for asylum numbered less than 5,000. Today the backlog is over 105,000. We are informed that a significant portion of these persons may be "economic migrants" and thus not legally qualified for asylum.

The number of illegal aliens already in the country is unknown. The Select Commission on Immigration and Refugee Policy used the figure of 3.5 to 6 million as the best guess for 1978. Whatever the number 4 years ago, there are surely many more now.

Immigration—legal plus illegal—now appears to be accounting for 30 to 50 percent of our annual population growth of about 2 million.

At the present time, net immigration—legal plus illegal—probably exceeds 750,000 per year. A net annual immigration of 750,000 would lead to a U.S. population in a hundred years of 300 million, if it is assumed that the fertility rate of the existing population remains at its present low level—which seems unlikely—and the fertility rate of the new immigrants immediately declines to that of the present population as a whole—which is even less likely, given the high fertility rates of the less developed countries from which most of the immigrants come. One-third of this 300 million would consist of immigrants arriving after 1980 and their descendants.

Indeed, these figures actually underestimate the impact of immigration. Since it is concentrated in only a few regions of the country, the impact on these regions is of much greater significance than the overall figure suggests. For example, under the same assumptions and assuming continuance of existing settlement patterns, the population of California would double by 2080. Over one half of that state's population would consist of post-1980 immigrants and their descendants.

The problems which may be caused by excessive population growth are well known and we shall not discuss them here.

Not only is there a very large number of legal and illegal immigrants, but only a small fraction of them are individually selected on the basis of labor market skills which have been determined to benefit the nation as a whole rather than primarily the interests of the immigrants themselves or their U.S. relatives.

As a result of this and of the fact that the present labor certification process may be of limited effectiveness, we believe there have been generally adverse job impacts, especially on low income, low-skilled Americans, who are the most likely to face direct competition, even though we also perceive a degree of economic growth from the use of "cheap" labor. Such adverse impacts include both unemployment and less favorable wages and working conditions. Not only does this cause economic harm to the directly affected Americans and their families, and in many cases a burden on the taxpayers, but it may also affect society as a whole in the form of social problems associated with unemployment and poverty.

Opponents of more comprehensive enforcement of the immigration laws have claimed that Americans will not take certain "menial" jobs. The Committee believes that this claim has been overdone.

First, many illegal aliens are working in nonmenial jobs which unemployed, underemployed, or less well-paid Americans would clearly take. This will be increasingly true if Federal and State support for various public assistance programs continues to be reduced.

Second, many other jobs which are not now attractive to a sufficient number of qualified Americans, could be made so if employers were to offer higher wages, better working conditions, or a reasonable training program. If a job cannot be filled by Americans at an affordable cost, then if possible it should be mechanized through additional capital investment and more advanced technology. Alternatively, a business might relocate some labor-intensive production overseas or the product or service might be imported from a foreign firm or simply forgone.

The Committee believes that bringing in foreign labor should be a very last resort. Even if no direct displacement of Americans occurs, such action will frequently reduce this country's average productivity

and per capita Gross National Product (GNP), a commonly used measure of a nation's prosperity.

In any case, if it is concluded that the use of foreign labor is beneficial under certain circumstances, then the law should allow this use under the appropriate limitations and conditions. Obviously, however, if the necessary limitations and conditions cannot be enforced, then no beneficial results can be assured.

Although population and direct economic impacts are of great significance, we think most people would agree that the national interest of the American people also includes certain even more important and fundamental aspects, such as the preservation of freedom, personal safety, and political stability—as well as the public cultural qualities and the political institutions which are their foundation.

No one seeking to enter the United States should be discriminated against because of race, color, or religion, as has sometimes happened in the past. This nation does have a right, however, to expect that anyone wishing to obtain the freedom and opportunity which is to be found in America will apply lawfully for entry and that those who are allowed to enter will seek to assimilate into American society, adopting and supporting the public values, beliefs and customs underlying America's success.

In the past several years a large majority of the new legal immigrants joining American citizens and permanent residents in the United States has come from Latin America, Asia, and the Caribbean area. With respect to illegal immigrants, it is estimated that Mexico is the source of at least 50–60 percent of the total, other parts of Latin America 10–15 percent, and the Caribbean area 5–10 percent.

To a large extent, the effect of such patterns will depend upon the degree and the pace at which immigrants and their descendants follow the historical pattern of earlier immigrant groups in assimilating into American society and culture.

A desire to assimilate is often reflected by the rate at which an immigrant completes the naturalization process necessary to become a U.S. citizen. There is considerable variation in the naturalization rates of immigrants from different countries of origin. A sample of those granted permanent resident status in 1971 was examined by the staff of the Select Commission on Immigration and Refugee Policy. Of those of Mexican origin who remained in the U.S. at the end of 7 years, only 5 percent had naturalized. For the entire region of South America the rate was 24.6 percent, for Europe 42.6 percent, and for Asia 80.3 percent (excluding China, India, Korea, and the Philippines, whose rates were, respectively, 73.8 percent, 67.8 percent, 80.9 percent, and 67.6 percent). Interestingly, Canada's naturalization rate was 3.4 percent.

If immigration is continued at a high level, yet a substantial portion of these new persons and their descendants do not assimilate into the society, they have the potential to create in America a measure of the same social, political, and economic problems which exist in the countries from which they have chosen to depart. Furthermore, if language and cultural separatism rise above a certain level, the unity and political stability of the nation will—in time—be seriously diminished. Pluralism, within a united American nation, has been the

single greatest strength of this country. This unity comes from a common language and a core public culture of certain shared values, beliefs, and customs which make us distinctly "Americans."

## D. The Solution—S. 2222

### (1) TITLE I—CONTROL OF ILLEGAL IMMIGRATION

Most importantly, S. 2222 contains provisions intended to reduce the problem of illegal immigration.

Obviously, the potential benefits and protections sought under even the most carefully designed statutory standards for determining who may enter the United States, as well as for how long and under what conditions they may remain, will not be available in practice if those statutory standards cannot be enforced.

*a. Employment*

There are only two types of solutions available to the problem of illegal immigration.

The first is direct enforcement: (A) to physically prevent illegal entry into the United States, for example through border control, fences, and interdiction, and (B) to find and deport those who are successful in entering illegally, as well as those who enter legally and then violate the terms of their visa.

The second type of solution involves reducing the incentives to enter.

All objective, comprehensive studies of the problem of illegal immigration, including those by the Ford, Carter and Reagan Administrations, as well as the Select Commission on Immigration and Refugee Policy, have concluded that adequate enforcement of U.S. Immigration laws cannot be achieved by direct enforcement alone. The Committee agrees.

Reliance on direct enforcement alone would require massive increases in enforcement in the interior—in both neighborhoods and work places—as well as at the border. This would be more costly and intrusive, as well as less effective, than a program which combines direct enforcement at reasonable levels with a reduction in the incentives to enter the United States.

At the present time there is a substantial disparity in job opportunity between the United States and Third World countries—a disparity which may well continue or even widen as a result of political and social conditions in those countries. Such disparity exists not only in rates of unemployment, but in wages and working conditions. Even if the unemployment rates were reduced, a difficult task in light of the high birth rates in these countries, the disparity in wages and working conditions would remain.

As long as greater job opportunities are available to foreign nationals who succeed in physically entering this country, intense illegal immigration pressure on the United States will continue. This pressure will decline only if the availability of United States employment is eliminated, or the disparity in wages and working conditions is reduced, through improvement in the Third World or deterioration in the United States.

The United States should, of course, assist Third World development, but the achievement of substantially higher living standards there is a prospect only for the long run and probably depends more than anything else on political and cultural change not in the control of the United States. Since deterioration in the United States is certainly not an attractive resolution, only one approach remains: To prohibit the knowing employment of illegal aliens.

S. 2222 provides for penalties against employers who knowingly employ illegal aliens and also against persons who knowingly and for a fee recruit or refer for employment such illegal aliens.

In order to protect both the persons subject to penalties and the members of minority groups legally in this country, the bill provides a system to verify that employees and potential employees are eligible to work in the United States. A formal, effective verification system combined with an affirmative defense for those who in good faith follow the proper procedure is imperative. Otherwise, the system cannot both be effective and avoid discrimination. If employers, recruiters, and referrers are given no protection, they will feel insecure and seek to avoid penalties by avoiding persons who they suspect might be illegal aliens, in other words those who "look or sound foreign" to them. If, on the other hand, they are given protection by utilizing a system which is easily defeated, for example one which relies indefinitely on existing documents, most of which are widely available in altered or counterfeit form or may readily be obtained fraudulently, then very little screening is likely to occur, even if the vast majority of employers, recruiters and referrers seek to obey the law, which we believe will be the case.

For the first three years after enactment, a transitional verification system will be used. It will involve examination of either a U.S. passport or two other existing documents adequate to verify both that the applicant is presenting his true identity and that he is authorized to work. The user of the system will then sign under penalty of perjury a statement that the required documents have been examined, and obtain the signature of the prospective employee that he is a U.S. citizen, permanent resident alien, or alien authorized to perform the particular work. In many cases existing application forms or something very similar could be used. In addition, the employer will be responsible for retaining these signed forms for five years, or until one year after the employment ends, whichever is later. The Committee emphasizes that the user of the system will not be responsible for the genuineness of the documents, only that such documents reasonably appear on their face to be genuine.

The bill requires the Executive Branch within three years to design and implement improvements in the system in order to make it more secure against fraudulent use. For example, whether the system were based on a card or other document or on a verifying telephone call to a government office, it would have to be resistant to use by imposters. If the system were to utilize a card or other document, such document would have to be resistant to counterfeiting and tampering, unless the President and the Judiciary Committees of the Congress agreed that this was unnecessary to the reliability of the system. In the final system, the underlying nonsecure documents, such as the birth certificate, would be examined by immigration experts. Users would utilize only the more secure system based upon them. Thus, although the verifica-

tion would still be based ultimately on nonsecure documents, these documents would be examined by immigration experts, not the users of the verification system.

For employers of four or more employees, use of vertification system will be mandatory. If such employers hire without using the system, they will be subject to a $500 fine. Smaller employers and those who for a fee recruit or refer for employment may use the system if they wish to have available the affirmative defense.

The Committee emphasizes that the government will have the burden of proving that an employer has hired or continued to employ an alien knowing that the alien was not eligible to work at the job. Under no circumstances will any presumption exist in favor of the government, even if the employer fails to follow the mandatory verification procedures. As indicated, if an employer follows in good faith the bill's verification procedures with respect to a particular alien, then the employer will have an absolute defense to any prosecution or penalty assessment with respect to that alien. Even if the employer chooses not to seek this affirmative defense, however, the burden of proving a knowing violation will remain on the government—by preponderance of the evidence in the case of civil penalties and beyond a reasonable doubt in the case of criminal penalties.

It has been claimed that a new verification system would be too costly and that it would pose a threat to privacy and civil liberties.

There are also tremendous costs in inadequate enforcement. The Congressional Budget Office has estimated that each unemployed person in the U.S. receives an average of about $7,000 per year in unemployment and welfare benefits. If the number of illegal aliens in the U.S. today is estimated at 6,000,000, and if even one percent hold jobs which unemployed Americans would take, then the savings would be $420,000,000 per year; if the displacement is two percent, the figure would be $840,000,000 per year, etc. Actual displacement is probably substantially higher.

The Social Security Administration recently estimated that the cost of replacing all Social Security cards with a tamper- and counterfeit-resistance version would be $108 million per year for ten years. The actual cost of this option should be lower since replacement of all cards would not be necessary. The Department of Labor has estimated the cost of a verification system utilizing telephone calls to a government data bank as averaging $333 million per year for the first 5 years and about $200 million per pear thereafter. Doubling the number of interior Immigration and Naturalization Service investigators would add $25–$30 million per year. Thus, a new system to verify work eligibility may well not exceed in cost the amount directly saved as a result of reduced public assistance alone, not even considering the value of the other benefits of reducing illegal immigration. Furthermore, a small fee could be utilized to raise the necessary revenue.

With respect to civil liberties, the Committee has given considerable thought to the question of how, for example, changing the form of the Social Security card, which is one of the alternatives that are available, could pose risks to liberty.

That question was asked of many witnesses at the hearings of the Subcommittee on Immigration and Refugee Policy—from the ACLU to Arthur Flemming of the U.S. Commission on Civil Rights. No one

has yet given a satisfactory answer. Other—never known for their neglect of civil and human liberties—agree with us, including Father Ted Herburgh, former Chairman of the Select Commission on Immigration and Refugee Policy and of the U.S. Commission on Civil Rights and the editorial writers of the New York Times, Washington Post, Los Angeles Times, Boston Globe and other major newspapers across the country, as well as former Attorneys General Elliot Richardson and Benjamin Civiletti.

We wish to emphasize that neither the transitional nor the permanent verification system will require personal data that is not already available in other government data banks. Thus, the verification system will either utilize a pre-existing data bank or a new one with less information.

Furthermore, the bill contains specific safeguards intended to minimize the risk of undue invasion of privacy and the risk of government abuse: (1) Personal information utilized by the system will not lawfully be available to government agencies, employers, and other persons except to the extent necessary for the purpose of verifying work eligibility. (2) A withholding of verification will not be lawful except on the basis that the employee or prospective employee has failed to show that he is a U.S. citizen, an alien lawfully admitted for permanent residence, or an alien authorized to be so employed by the Immigration law or the Attorney General. (3) The system will not lawfully be available for law enforcement use outside the proposed employer sanctions and present labor law procedures. (4) If the system were to require individuals to present a card or other document, then such document would not be required to be presented for any purpose other than verification of employment eligibility and would not be required to be carried on the person. The Committee is most emphatically not requiring or permitting the development of an "internal passport" or "national I.D. card."

In addition to the protective provisions in the bill, there are far stronger protections already in place. The most important safeguard of the civil liberties of Americans is not "the law", which can always be changed, but rather than public cultural elements which underlie the law, including the values and traditions of our form of government, which are part of the American character. As long as the American people themselves do not come to accept and adopt forms of government like those of nations more willing to tolerate repression in their political system and leaders, then no danger exists. There is no "slippery slope" toward loss of liberties, only a long staircase where each step downward must be tolerated by the American people and by their leaders. The Committee does not believe that the system being proposed involves any form of a step toward loss of civil liberties.

With respect to the penalties for knowing employment or knowing recruitment or referral for employment, the bill's provisions are, in the view of the Committee, quite reasonable. Indeed, no penalty at all will be imposed during the first six months after enactment, nor will any violation during that period be counted for purposes of determining the level of penalty for later violations. Even in the second six months after enactment, the initial violation will be subject only to a warning and it will not be counted for the purposes of deter-

mining the level of penalty later. For this first year of enactment the bill directs various government agencies to cooperate in disseminating forms and information to employers and other Americans, and otherwise educating the public about the requirements of the program.

Under the normal penalty structure, the first assessment of penalties will be at a rate of $1,000 per illegal alien. This will be a civil, not a criminal, penalty. For a violation occurring after at least one prior penalty has been assessed and opportunity for an administrative hearing has been provided, a civil penalty of $2,000 per illegal alien will be available.

Only for "a pattern or practice" of violation, may a misdemeanor (criminal) penalty of $1,000, six months imprisonment, or both be imposed. General principles of criminal law will apply. Therefore, only a person with the requisite managerial authority who has been shown beyond a reasonable doubt to have had an awareness or belief that he was hiring or continuing to employ, or for a fee recruiting or referring, illegal aliens will be subject to criminal penalties. A jury trial will, of course, be available. In addition to these penalties the Attorney General will be able to seek an injunction in a U.S. District Court for a pattern or practice of violation.

Stiff criminal penalties are provided for the fraudulent production, sale, distribution, or use of any document which may be presented to satisfy a requirement of the immigration laws (or which may be presented to obtain such a document).

Concern has been expressed that the employer sanctions program will be used as an excuse by employers who want to avoid hiring certain persons because of their race or national origin. The Committee believes that any such discrimination in hiring is a violation of Title VII of the Civil Rights Act of 1964. If an action were brought against such an employer, the employer might allege that his decision not to hire was motivated by a fear of employer sanctions. If, however, the plaintiff were to show by a preponderance of the evidence that the employer did not actually have such fear, then such allegation would not have helped the defendant's case. The most likely form of such evidence would be a sworn statement that documents had been presented to the employer showing that the applicant was authorized to be so employed, along with the documentary evidence itself (which would of course be in the possession of the applicant). If the documents appeared on their face to be genuine and to belong to the applicant, and if the employer were unable to present equally convincing evidence that such documents had not been presented or that despite the documents the employer had reasonable grounds for believing the applicant to be an alien ineligible to be so employed, then the judge or jury would conclude that the employer's reason for deciding against hiring the applicant was something other than a fear of employer sanctions.

*b. Enforcement and fees*

S. 2222 states the sense of Congress that resources for border patrol and other enforcement activities should be increased and requires that fees be imposed for use of border and other INS facilities and services in an amount commensurate with cost.

In addition the bill creates a new criminal offense for bringing an alien to the U.S. with knowledge or in reckless disregard of the fact that the alien has not received prior official authorization to enter, regardless of whether fraudulent, evasive, or surreptitious means are used.

*c. Exclusion, deportation, and asylum*

In an attempt to further deter the violation of U.S. immigration law and to reduce the harmful impact of such violations when they do occur through reducing the time illegal aliens are able to remain in the country after apprehension, S. 2222 contains improvements in exclusion, deportation, and asylum adjudication procedures. At the present time aliens not legally entitled to be in this country are able to stay for months or even years, pursuing various stages of appeal. Furthermore, during such delay most are able to move freely in American society, many with work authorization. Obviously this does not provide much deterrence.

The bill provides a summary exclusion proceeding without an appeal for those who enter the country without documents and who are not claiming asylum. For all cases involving asylum, the bill provides for extensive administrative consideration, within the Justice Department but outside the Immigration and Naturalization Service—first a hearing on the record before a specially trained immigration judge (in which the applicant would be entitled to be assisted by counsel without charge to the government or unreasonable delay, to present evidence, and to examine and cross-examine witnesses) and then, if desired, an administrative appeal to a newly created United States Immigration Board. Consistent with the practices of most other countries, there will be no right of further review on the issue of asylum, other than the constitutionally guaranteed right to seek a writ of habeas corpus. The Attorney General, in his discretion, may provide that a case which has been decided by the Board be certified to him for his own review. If the Attorney General reverses or modifies the Board's decision, then judicial review in the Circuit Court of Appeals will be available—as in a deportation case.

Outside of this asylum area, the bill streamlines the adjudication procedure for both deportation and exclusion. In exclusion cases not involving asylum and not subject to the summary exclusion procedure, a hearing will be held before an immigration judge. Appeals would be available to the same degree as in asylum cases.

In deportation the procedure will be the same as in exclusion except that judicial review of the decision of the Board will be available at a Circuit Court of Appeals, but limited to the issue of whether the Board's findings were supported by substantial evidence.

Some persons have indicated concern that judicial review of asylum decisions of the United States Immigration Board will not be available unless the Attorney General reverses or modifies the Board's decision. See Section-by-Section Analysis relating to Sec. 123(b). It is true that a review will not be available comparable to that provided in INA section 106(a) for non-asylum deportation cases, i.e. one with a substantive review of the Board's decision (including whether or not the findings of fact are supported by substantial evidence). However, the Committee believes that the issue of whether aliens are being denied

asylum in violation of their constitutional right to due process may be considered by a federal court in the habeas corpus proceedings guaranteed under the Constitution. Due process for an alien applying for asylum will include the individual adjudication of his claim through fundamentally fair procedures, procedures which could be relied on for an objective determination, on the merits, of whether or not the individual applicant satisfies the statutory definition of "refugee" in INA section 101(a)(42) and whether or not his "life or freedom" would be threatened "on account of race, religion, nationality, membership in a particular social group, or political opinion" if he were returned to his home country (or another country to which he might be deported), as provided in INA section 243(h). An example of such a due process violation would be a pattern or practice of denying asylum applications made by aliens from a particular country because of their national origin rather than on the basis of the merits of their individual claims.

Aliens in physical custody and those paroled pending their hearing, subject to conditions which constitute a "significant restraint on liberty," are in custody for the purpose of determining habeas corpus jurisdiction. See *Hensley* v. *Municipal Court*, 411 U.S. 345 (1973) (prisoner case in which the convicted petitioner had been released on his own recognizance pending execution of sentence, subject to his written agreement that he would appear as ordered by the court, that if he did not appear and was apprehended in another state he would waive extradition, and that any court could revoke the order of release and either return him to custody or require bail or other assurance of appearance); *Jones* v. *Cunningham*, 371 U.S. 236 (1963) (prisoner case in which the petitioner had been released from prison on parole, subject to such restrictions as a requirement to obtain permission of parole officer before leaving community, changing residence, or operating a motor vehicle, and to make monthly reports, to permit the officer to visit his house or place of employment at any time, and to follow the officer's instructions and advice). Although these cases considered the statutory right of habeas corpus under 28 U.S.C. § 2241, the Committee believes the reasoning of the opinions would also apply to cases involving the "privilege of the writ of habeas corpus" guaranteed in the Constitution, Art. I, § 9, cl. 2. See "Developments in the Law—Federal Habeas Corpus." 38 Harv.L.Rev. 1038 (1970). Some indication of the view of the U.S. Supreme Court on the issue of what kind of custody or restraint on liberty is required for constitutional habeas corpus may be found in the court's opinion in *Jones* v. *Cunningham*, supra:

> Habeas corpus was used in 1763 to require the production in court of an indentured 18-year-old girl. . . . Although the report indicates no restraint on the girl other than the covenants of the indenture, the King's Bench ordered that she "be discharged from all restraint, and be at liberty to go where she will." (footnotes omitted) 371 U.S. at 239.

Because in an asylum case no court within the judicial branch will otherwise have an opportunity to examine for procedural due process the executive action imposing the custody or restraint on liberty, and because in asylum cases the result of a failure to provide procedural

due process may ultimately be severe prejudice to the applicant (if he is returned to a place where he will be persecuted), the Committee believes that a federal district court would permit an asylum applicant to obtain through a habeas corpus proceeding judicial determination of whether or not procedural due process had been violated during the adjudication of his application.

In other words, the restriction on judicial review is not intended to prevent a federal court from correcting through habeas corpus proceedings a violation of due process. On the other hand, the Committee intends that there be no judicial review of the merits of any individual asylum case, and no judicial review of the procedural aspects of any particular adjudication unless the petitioner has alleged procedural defects which are fundamental and clearly prejudicial. The Committee also intends, to the degree constitutionally appropriate, that the courts not prevent the commencement of the administrative process or interrupt or stay ongoing administrative determinations and that the appellate federal courts not stay exclusion or deportaion orders with respect to appellants denied writs of habeas corpus at the district court level unless the appellant shows the likelihood that he would prevail on the merits, and that denial of the stay would cause him irreparable injury.

Finally, the Committee notes that, although there appears to be disagreement among several Circuit Courts of Apeal on the issue of whether the class action provisions of Rule 23 of the Federal Rules of Civil Procedure are available in habeas corpus proceedings, an issue which has not yet been resolved by the Supreme Court, there is no doubt that at a minimum:

> a federal court may permit multi-party habeas actions similar to the class actions authorized by the Rules of Civil Procedure when the nature of the claim so requires. *U.S. ex rel. Sero* v. *Preiser*, 506 F.2d 1115 (2d Cir. 1974), cert. denied 421 U.S. 921 (1975).

*Bertrand* v. *Sava*, 535 F. Supp. 1020, 1024 (S.D.N.Y. 1982) (appeal pending on unrelated issues).

*d. Adjustment of status*

At the present time a great many immigrant visas are given to those who have entered the U.S. as nonimmigrants and then violated the terms of their visa. S. 2222 limits the availability of adjustment of status for such visa abusers unless they are an "immediate relative" of a U.S. citizen. This is intended to act as a mild deterrent.

*e. Assistance to employers to adjust to the loss of illegal foreign workers*

As a result of the measures discussed and the increased resources we expect will be devoted to enforcement by the Immigration and Naturalization Service, illegal immigration should be reduced substantially. We recognize the possibility that substantial adverse economic impact might occur on certain employers who have quite lawfully become dependent on illegal foreign workers.

We have attempted to deal with this problem by several provisions which will provide some transitional assistance to employers in order

that they will have an opportunity to try to adjust to the new labor market situation.

First, the employer sanctions program will not apply to illegal aliens hired before the bill is enacted.

Second, the legalization program, which will be later discussed, will legalize many currently illegal workers.

Third, the certification of the Department of Labor which must be obtained for certain job-related immigrant visa categories, is modified to allow a more efficient and accurate determination of when a foreign worker is needed.

Finally, the H–2 program is modified, as discussed below, so that employers who can demonstrate a genuine need for a foreign worker for temporary services or labor will receive an approval within a reasonable period of time.

### (2) TITLE II—REFORM OF LEGAL IMMIGRATION

In addition to reducing illegal immigration, S. 2222 is intended to modify legal immigration so that it will better serve the national interest—by increasing control over the number admitted and by amending the selection criteria.

*A. Immigrants*

The bill divides immigrants into two broad categories: (a) family reunification immigrants, which includes numerically unlimited 'immediate relatives" of U.S. citizens and numerically limited family reunification preference immigrants, and (b) independent immigrants, which includes numerically unlimited "special immigrants" and numerically limited independent preference and nonpreference immigrants. Although "immediate relatives" of U.S. citizens will continue to be exempt from numerical limitations, the number available for the family reunification preference categories would be determined by subtracting the number of such immediate relatives admitted in the prior year from 350,000. Therefore, any increase in the number of "immediate relatives" will be compensated for by a reduction in the visa numbers available for other family reunification categories. A similar approach will link the numerically exempt "special immigrants" with the independent preference categories. The limit will be 75,000 minus the number of "special immigrants" admitted in the prior year.

The effect of these changes is that for the next 10–30 years, at least, the total of all new immigrants, excluding refugees, will not exceed 425,000 which is approximately the current level. That level will be exceeded only when the number of immigrants who are "immediate relatives" of U.S. citizens increases from its present level of about 155,000 to in excess of 350,000 per year, and only by the amount of such excess. Under present law increases in the number of "immediate relatives" do not require any offsetting reduction in admissions under any of the numerically limited categories.

The bill amends the "per-country ceiling" to provide that, except for Mexico and Canada, the number of immigrants from a single country which may be admitted in one year may not exceed 20,000 minus the number of "immediate relatives" and "special immigrants" admitted

from such country in the prior year in excess of 20,000. For Mexico and Canada, the ceiling for each country will equal 40,000 minus such excess of "immediate relatives" and "special immigrants" over 20,000 in the prior year, plus the unused numbers from the other country in the prior year.

S. 2222 makes several changes in the current criteria for allocating numerically limited immigrant visas.

The family preference categories will not include what is now referred to as the 5th preference, that is the brothers and sisters of adult U.S. citizens. This is done in order to reserve for the closer relatives the limited visas available for family reunification and to allow an increase in immigration opportunities for those who have no close relatives in the United States but who do have skills which will benefit the American people as a whole. Those who had already received 5th preference status and were on the waiting list as of March 1, 1982 will be protected. For the same reasons, the definition of second preference will be narrowed somewhat to cover spouses and minor children of permanent residents—their "nuclear family." The percentage of family reunification visas allocated to this category is increased greatly.

The independent categories include one for substantial investors in the U.S. economy who create jobs for U.S. citizens and permanent residents other than their own relatives. The highest priority independent preference category is reserved for aliens with exceptional ability in the sciences, arts, professions, or business. This is the present third preference with certain exceptions: business is added to the fields covered, exceptional ability is required of members of the professions, and it is explicitly stated that possession of a degree, diploma, certificate, or similar award from an institution of learning, or of a license to practice or certificate for a particular profession or occupation shall not by itself be considered sufficient evidence of the required exceptional ability.

New family reunification preference categories, along with their share of the total ceiling for such categories, are as follows:

(a)(1): unmarried adult sons and daughters of U.S. citizens (present first preference): 15 percent plus unused in (a)(4);

(a)(2): spouses and minor children of lawful permanent residents (present second preference, minus adult sons and daughters): 65 percent plus unused in (a)(1);

(a)(3): married adult sons and daughters of U.S. citizens (present fourth preference): 10 percent plus unused in (a)(1) and (a)(2);

(a)(4): brothers and sisters of adult U.S. citizens, whose visa petitions have already been approved (the present fifth preference backlog as of March 1, 1982): 10 percent plus unused in (a)(1)–(a)(3).

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New independent preference categories, along with their share of the total ceiling for such categories, are as follows:

(b)(1): aliens of exceptional ability (a modified form of the present third preference) will be allowed up to the ceiling;

(b)(2): skilled workers needed in the U.S. (part of present sixth preference): visas unused in (b)(1);

(b)(3): investors of $250.000 in a new enterprise creating at least four jobs: visas unused in (b)(1) and (b)(2) (no more than 10 percent of the ceiling);

(b)(4): nonpreference aliens (the unskilled portion of the present sixth preference, plus nonpreference aliens): visas unused in (b)(1)–(b)(3).

The bill modifies the requirement of section 212(a)(14) of the INA that the Secretary of Labor certify that aliens seeking to enter the U.S. for the purpose of performing labor will not adversely affect U.S. workers. The new section authorizes the Secretary of Labor to use general labor market information in considering the certification rather than only an analysis of the impact of the specific alien in the specific job. In addition the bill provides that the certification must include a finding that sufficient U.S. workers could not be trained within a reasonable period of time, and authorizes the Attorney General to waive the requirement of a job offer with respect to an alien seeking to obtain the status of an immigrant under section 203(b)(1) of the INA.

*b. Nonimmigrants*

In addition S. 2222 proposes to change the law with respect to certain nonimmigrant categories.

The bill amends the H–2 temporary worker program to establish a special procedure for seasonal workers in agriculture:

Employers may not be required to apply more than 80 days in advance of need;

The Secretary of Labor is directed to provide a decision on certification at least 20 days in advance of need;

If certification is denied, the Secretary of Labor will make available an expedited procedure to review such denial, or, at the applicant's request, a de novo administrative hearing;

If the Secretary of Labor determines that a certain number of qualified U.S. workers will be available at the time needed but at that time the U.S. workers are not available or are not qualified, then an expedited procedure to determine continued need will be available. If the employer claims that the U.S. workers were not qualified, the employer will have the burden of proving such lack of qualification.

The bill provides that all regulations implementing the program must be approved by the Attorney General afer consultation with the Secretary of Labor and Secretary of Agriculture.

The Secretary of Labor is authorized to monitor and enforce terms and conditions of the program. $20,000,000 is authorized for such enforcement and for the recruitment of U.S. workers.

The Committee rejected proposals to adopt a massive new temporary or "guest worker" program. Such a program would create significant dangers, including adverse impacts on U.S. workers, especially if the temporary workers were not limited to the particular job or job category where they were allegedly needed. Many of the temporary workers could choose to stay permanently, as they have in Europe, where significant social problems resulted, as well as considerable doubt that the guestworker program had been a workable idea. Permanent stays are especially likely if the workers may bring in their family, if they have U.S. citizen children, if they are not restricted to a particular job or job category, or if they are authorized to stay for long periods in the U.S. (such long periods of stay increase ties to the U.S. and also the likelihood that the workers will bring in their

family even if it is illegal, or if they have no family, that they will start a family in the U.S.). Furthermore, to the extent that temporary workers believe that they will be returning to their home country, they will tend not to learn English and otherwise integrate into American life. They will tend to form foreign enclaves, with associated social problems, and may even delay the integration of lawful permanent residents from the same country of origin.

In addition the bill prohibits foreign students from adjusting their status to permanent resident and provides that foreign students will not generally be allowed to obtain immigrant status, or temporary worker status under INA section 101(a) (H) or (L), until they have resided and been physically present in their home country for two years after their departure from the United States.

Foreign students are admitted to the U.S. so that they may be educated and then return to their home country, giving that country the benefit of their U.S. education. In a sense it is a form of foreign aid. Allowing the students to stay is a "brain drain" of their best young talent. The Committee believes that the best long-term way to control immigration pressure on the U.S. is to encourage political and economic improvement abroad. If foreign students who have received the benefit of U.S. education and exposure to U.S. political values return to their home country, such improvements are more likely to occur. Furthermore, the Committee has been informed that a significant number of foreign students use their stay in the U.S. as "a scouting expedition" to search for a U.S. employer willing to submit a preference petition on their behalf. Finally, the Committee notes and expresses its concern at what appears to be a growing dependence on foreign high technology labor. Part of this results from a pattern of college and industry recruitment of aliens facilitated by the ability of students to adjust to permanent resident status.

The bill allows the Attorney General and the Secretary of State acting jointly to establish a 3-year pilot visa waiver program after the development of an automated nonimmigrant entry and exit control system. Under the program the requirement of a visitor's visa for the nationals of 5 countries selected from those which extend or agree to extend reciprocal privileges to U.S. citizens would be waived if such persons have a round trip, nonrefundable, nontransferable ticket and if the rate of exclusion and of visa denial for the nationals of such country is very low. This change would allow the Secretary of State to transfer resources to consular offices where the need to screen visitors is greater. Furthermore, the beneficial entry of desirable business and tourist visitors would be facilitated.

Finally, the bill provides special immigration benefits to certain holders of the G–iv visa if they have resided in the U.S. for many years, specifically certain retired employees of international organizations, such as the U.N. and the World Bank, surviving spouses of deceased employees of such organizations, and children of such employees.

### (3) TITLE III—LEGALIZATION

The U.S. has become home for millions of illegal aliens, a large number of whom have been here for many years.

S. 2222 provides for the legalization of illegal aliens into two categories of legal status.

First, illegal aliens who have continuously resided in the United States since January 1, 1978 will immediately qualify for permanent resident status.

Second, those who have continuously resided in the U.S. since January 1, 1982, or who are in the Cuban/Haitian "entrant" status, will qualify for a temporary status, which may be adjusted to permanent status after two years if the alien has or is acquiring minimum English competence. Aliens in the temporary status will not be eligible for most forms of public assistance.

Persons convicted of certain crimes, Nazis and other persons who have persecuted others, Communists, anarchists, saboteurs, and those seeking to overthrow the government will be excluded from each category of legalization. Most other classes of excludable alien will also not qualify, including aliens who are likely to become a public charge, unless a waiver is obtained. See Section-by-Section Analysis relating to Sec. 301.

We seek three major goals through legalization:

The first is to avoid wasteful use of the Immigration and Naturalization Service's limited enforcement resources. The United States is unlikely to obtain as much enforcement for its dollar if the Immigration and Naturalization Service attempts to locate and deport those who have become well settled in this country, rather than to prevent new illegal entry or visa abuse.

The second goal is to allow dependent employers to continue lawfully hiring from this pool of labor.

The third is to eliminate the illegal subclass now present in our society. Not only does their illegal status and resulting weak bargaining position cause these people to depress U.S. wages and working conditions, but it also hinders their full assimilation, and they then remain a fearful and clearly exploitable group within the U.S. society.

#### (4) TITLE IV—REPORTS TO CONGRESS

The President is required to report to the Senate and House Judiciary Committee on:

(1) The employer sanctions provisions, including an analysis of the progress toward a secure verification system; and the impact of such provisions on illegal immigration, on U.S. employment, on discrimination against ethnic minorities, and on the recordkeeping burden of employers;

(2) Legal immigration;

(3) Legalization;

(4) H–2 program;

(5) Visa waiver program.

## III. RECENT IMMIGRATION STUDIES AND REFORM EFFORTS

The Immigration Reform and Control Act of 1982 represents the first comprehensive immigration reform effort in the United States in 30 years. The last major legislation enacted in this area was the Immigration and Nationality Act of June 27, 1952, popularly known as the McCarran-Walter Act. The 1952 statute has been modified through the years by a series of amendments, most notably those of 1965 and

1976. These amendments provided primarily for reform of the system for admitting legal immigrants to this country.

While the amendments to the Immigration and Nationality Act ("INA") in the Immigration Reform and Control Act of 1982 would make additional changes in the legal immigration system, a significant portion of the legislation is directed toward improving control of illegal immigration to the United States. During the past decade, the principles embodied in these provisions have been the subject of substantial study by the Executive branch, as well as by the Congress.

The reports and legislative activity generated during this period have focused on the basic components of the immigration reform package of S. 2222: employer sanctions, legalization, and increased enforcement.

### History, 92d–96th Congresses (1971–1980)

In 1971, during the 92d Congress, the House Judiciary Subcommittee charged with immigration matters and chaired by Representative Peter W. Rodino, Jr., initiated a lengthy series of hearings pertaining to the control of illegal or undocumented aliens. Mr. Rodino's subcommittee reported in 1975, that:

> The basic conclusion reached by the majority of the members of the subcommittee as a result of the hearings was that the adverse impact of illegal aliens was substantial, and warranted legislation both to protect U.S. labor and the economy, and to assure the orderly entry of immigrants into this country.[1]

The legislation resulting from these hearings consisted of two bills which would impose graduated administrative, civil, and criminal penalties on employers who knowingly employed illegal aliens. The House Judiciary Committee explained its choice of employer sanctions as the principal means of curbing illegal immigration as follows:

> The committee believes that the primary reason for the illegal alien problem is the economic imbalance between the United States and the countries from which aliens come, coupled with the chance of employment in the United States. Consequently, it is apparent that this problem cannot be solved as long as jobs can be obtained by those who enter this country illegally and by those who enter legally as nonimmigrants for the sole purpose of obtaining employment.
>
> The committee, therefore, is of the opinion that the most reasonable approach to this problem is to make unlawful the "knowing" employment of illegal aliens, thereby removing the economic incentive which draws such aliens to the United States as well as the incentive for employers to exploit this source of labor.[2]

The House Judiciary Committee's employer sanctions legislation was endorsed by both the Nixon and Ford Administrations and passed

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[1] H. Rept. 94–506, 94th Congress, 1st session, Sept. 24, 1975, p. 5.
[2] Ibid., p. 6.

the House of Representatives twice, during the 92nd Congress (H.R. 16188) and the 93rd Congress (H.R. 982). No Senate action on these or similar bills was taken in either Congress.

During the 93rd Congress a related measure was passed by both Houses and signed into law by the President. This law amended the Farm Labor Contractor Registration Act of 1963 to establish criminal penalties for certain farm labor contractors who knowingly hire illegal workers.

During the 94th Congress an identical bill to H.R. 982 was introduced in the House and additional hearings were held by the House Judiciary Subcommittee on Immigration, Citizenship, and International Law. These hearings resulted in a new version of the bill, H.R. 873, which included, in addition to employer sanctions, a legalization provision for those illegal immigrants who had resided in the U.S. since July 1, 1968, and a provision intended to prevent discrimination against citizens and legal aliens on the basis of "foreign" appearance. This bill was reported out of the full Judiciary Committee in September 1975, but received no further action.

During the 95th Congress a similar bill, H.R. 1663, was introduced by Representative Joshua Eilberg, Chairman of the Subcommittee on Immigration, Citizenship, and International Law, but received no further action.

The principal legislative activity on this issue in the Senate during the 94th Congress focused on S. 3074, an omnibus reform bill introduced by Senator James O. Eastland, Chairman of the Senate Judiciary Committee and the Subcommittee on Immigration nad Naturalization. This bill included employer sanctions (civil penalties as well as an injunctive remedy) for the knowing employment of illegal workers, a legalization program with a July 1, 1968, cut-off date for eligibility, and a revision of the H–2 temporary worker program to allow for the admission of foreign workers to perform certain permanent as well as temporary jobs. Subcommittee hearings were held on S. 3074, but the bill was not reported to the full committee.

### FORD ADMINISTRATION PROPOSALS

During this period the Executive branch was also engaged in studies and made legislative recommendations on the issue of illegal immigration, which was perceived during this decade to be a significant and growing domestic policy problem.

In January 1975, President Gerald Ford established, under the chairmanship of Attorney General Edward Levi, a Cabinet-level Domestic Council, Committee on Illegal Aliens. This Committee's report which was dated December 1976, stressed that control of illegal immigration will only result from a multi-faceted approach:

> The Committee does not believe any single element among its recommendations can solve the illegal alien problem. It does believe that the cumulative effect of implementing the recommendations which follow will be to slow the flow of illegal aliens significantly and to take major strides toward the development of a more effective immigration policy.[3]

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[3] Preliminary report, p. 240.

The Committee's recommendations included employer sanctions, a legalization program with a July 1, 1968, eligibility date, increased enforcement resources, increased penalties against smugglers, an evaluation of the H–2 program to make it more responsive to legitimate labor shortages, a revision of immigrant labor certification provisions to eliminate individual certifications, and a broad-based research effort to determine the nature and scope of immigration related problems.

### CARTER ADMINISTRATION PROPOSALS

The Carter Administration, under the leadership of Attorney General Griffin Bell, Secretary of Labor Ray Marshall, and Immigration and Naturalization Service Commissioner Leonel Castillo, determined early in its term that the problem of illegal immigration was a critical national issue:

> These proposed actions are based on the results of a thorough Cabinet-level study and on the groundwork which has been laid, since the beginning of the decade, by Congressmen Rodino and Eilberg and Senators Eastland and Kennedy * * *
>
> Each of these actions will play a distinct, but closely related, role in helping to solve one of our most complex domestic problems. In the last several years, millions of undocumented aliens have illegally migrated to the United States. They have breached our nation's immigration laws, displaced many American citizens from jobs, and placed an increased financial burden on many States and local governments.[4]

After a Task Force study of the issue, a comprehensive immigration reform bill was drafted by the Carter Administration, the "Alien Adjustment and Employment Act of 1977," and introduced in October 1977 as H.R. 9531 and S. 2252.

The Carter package contained five basic provisions:

(1) Civil penalties (injunctions and fines of $1,000 per undocumented alien) against those employers who knowingly hire illegal workers;

(2) Increased enforcement of the Fair Labor Standards Act and the Federal Farm Labor Contractor Registration Act targeted to areas with high illegal employment;

(3) Permanent resident status for eligible illegal aliens who had resided in the U.S. since January 1, 1970, and a five-year temporary resident status for those who had resided continuously since January 1, 1977.

(4) Substantially increase resources for enforcement at the Southern border and ports-of-entry.

(5) Continued cooperation with source countries in their effort to improve their economies and improve control over alien smuggling activities.

While President Carter rejected any new temporary worker program, he did recommend reviews of the existing H–2 temporary worker program and overall U.S. immigration policy. Furthermore, he indicated his support of pending legislation to increase the annual limits

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[4] "Undocumented Aliens, Message from the President of the United States," U.S. House of Representatives, 95th Congress, 1st session, Doc. No. 95–202, Aug. 4, 1977, p. 1.

of 20,000 each for Canada and Mexico to a combined figure of 50,000, to be allocated on the basis of demand.

The Senate Judiciary Committee held hearings on S. 2252 in May 1978, but the Carter Administration bill received no further action during the 95th Congress.

The Carter proposals were attacked by some vocal public interest groups and members of Congress who claimed that the package was not sufficiently grounded in factual studies and that other alternatives to curb illegal immigration had not been adequately examined. It was this desire for a comprehensive review of U.S. immigration policy which led to the establishment of the blue-ribbon, bipartisan Select Commission on Immigration and Refugee Policy during the 95th Congress.

### SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Legislation enacted in 1978 (Public Law 95–412) established a 16-member Select Commission on Immigration and Refugee Policy consisting of 4 members of the Senate Judiciary Committee (Senators Mathias, Simpson, Kennedy, DeConcini), 4 members of the House Judiciary Committee Representatives Rodino, Holtzman, McClory, Fish), 4 Carter Administration Cabinet Secretaries (from the Departments of Justice, State, Labor, and Health and Human Services), and 4 public members appointed by President Carter, including its Chairman, the Reverend Theodore M. Hesburgh. Its mandate was "to study and evaluate * * * existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States and to make such administrative and legislative recommendations to the President and to the Congress as are appropriate."

To fulfill this mandate the Select Commission "sought the most reflective, authoritative information from individuals, groups and studies through a variety of methods," including contracting social science and legal research, 12 regional public hearings and site visits across the nation. Consultations were held with experts inside and outside the government, including scholars, representatives from state and local governments, Hispanic and other ethnic organizations, environmental and population groups, international organizations, church organizations, civil liberties groups, organized labor, employees' associations, and immigration lawyers.

After two years of study and deliberation, the Select Commission issued its final report, entitled "U.S. Immigration Policy and the National Interest" on March 1, 1981. The Commission noted that of all the issues related to immigration and refugee policy, the most critical was illegal immigration. The illegal population in the U.S. was estimated to total 3.5–6 million persons in 1978.

The Commission recommended "immediate action" to control illegal immigration and enumerated the key elements of their program:

(1) Increased funding, training, and manpower for border and interior enforcement;

(2) Enactment of legislation making it illegal for employees to hire undocumented aliens; such sanctions would be based on some form of identification verifying employees' eligibility to work in the U.S.;

(3) Increased enforcement of wage and working standards legislation; and

(4) When new enforcement measures have been instituted, legalization of status for certain aliens who had entered the U.S. before January 1, 1980, and resided here for a minimum period of years which was left for Congress to determine.

The Commission rejected any new temporary worker program in response to illegal immigration, but did recommend improving the existing H–2 program as a means for addressing temporary labor shortages without adversely affecting American workers.

Although the Commission did not reach a consensus as to the specific type of identification that should be required for verification of employment eligibility under employer sanctions laws, they did agree on the principles that should underlie a verification system; reliability, protection of civil rights and civil liberties, and cost effectiveness. They stated that without a verification system, employer sanctions laws, the cornerstone of reducing illegal immigration, would be very difficult to enforce properly;

> [The Commission] acknowledges the criticism leveled at previous employer sanctions legislation on the basis of the vague, and therefore unenforceable, requirement that employers must knowingly hire undocumented workers. It holds the view that an effective employer sanctions system must be based on a reliable means of verifying employment eligibility. Lacking a dependable mechanism for determining a potential employee's eligibility, employers would have to use their discretion in determining that eligibility. The Select Commission does not favor the imposition of so substantial a burden on employers and fears widespread discrimination against those U.S. citizens and aliens who are authorized to work and who might look or sound foreign to a prospective employer. Most Commissioners, therefore, support a means of verifying employee eligibility that will allow employers to confidently and easily hire those persons who may legally accept employment. . . . To be nondiscriminatory, they believe, any employee eligibility system must apply equally to each member of the U.S. workforce—whether that individual be an alien authorized to work in this country or a U.S. citizen.

In terms of legal immigration, the Select Commission concluded that immigration has been and continues to be in the national interest. It recommended a separation of the categories of family reunification and independent immigrants; a continuation of the exemption of immediate family of U.S. citizens from the numerical ceiling; a permanent increase in the annual worldwide ceiling on numerically restricted immigrants, from 270,000 to 350,000, and an additional increase of 100,000 for 5 years to absorb existing backlogs.

The Select Commission's recommendations were reviewed at special joint Congressional hearings and by the Reagan Administration.

### REAGAN ADMINISTRATION PROPOSALS

Following the submission of the final report of the Select Commission on Immigration and Refugee Policy on March 1, 1981, President

Reagan appointed Attorney General William French Smith to chair a Cabinet-level task force to review the Commission's findings and recommendations and to develop a comprehensive immigration reform strategy.

On July 30, 1981, President Reagan announced the basic provisions of his proposals for immigration and refugee policy reform. Although he pledged that "America's tradition as a land which welcomes people from other countries" would continue, he emphasized that immigrants must be accepted "in a controlled and orderly fashion." The proposals were principally directed toward improving control of general illegal immigration as well as mass arrivals of undocumented aliens claiming asylum.

President Reagan's proposals relating to the general problem of illegal immigration include:

(1) Sanctions against employers of 4 or more employees who knowingly hire illegal aliens, with civil penalties ranging from $500–$1,000 per violation;

(2) Verification of employment eligibility would be based on a combination of existing identification documents which would be required of all American workers at the time of seeking employment;

(3) Legalization of status of otherwise admissible aliens illegally present in the United States as of January 1, 1980, as well as Cubans and Haitians here since January 1, 1981, on a 3-year renewable temporary basis. After 10 years residency (5 years for Cubans and Haitians), such persons could apply for permanent residence provided they demonstrate minimal English proficiency;

(4) A two-year pilot temporary worker program to admit up to 50,000 Mexican nationals to perform jobs lasting 9–12 months in states and occupations where the Governor had certified a shortage of U.S. workers; and

(5) Increased resources for enforcement of existing immigration and labor laws.

President Reagan's proposal to handle future mass arrivals included:

(1) Increased enforcement measures, including legislation to strengthen penalties for the transporting of undocumented aliens to the U.S., to prohibit U.S. residents from traveling to designated foreign countries during Presidentially declared emergencies, and to strengthen existing law relating to the seizure and forfeiture of vessels used in violation of the law;

(2) Interdiction by the Coast Guard of certain vessels, and budget authority for additional detention facilities for undocumented aliens awaiting further legal proceedings;

(3) Legislation to expedite exclusion and asylum proceedings; and

(4) Contingency planning for future mass arrivals by sea.

The President also proposed increasing the annual ceilings for immigration from Canada and Mexico, because of their special relationship as contiguous neighbors.

Legislation implementing these and other Reagan Administration proposals was introduced on October 22, 1981, as S. 1765/H.R. 4832,

the Omnibus Immigration Control Act. This bill was introduced by request by the Chairmen of the Senate and House Judiciary Committees, Senator Strom Thurmond and Representative Peter W. Rodino, Jr., and subsequently referred to the Senate and House Judiciary Committees where hearings were held on the Reagan proposals by the appropriate subcommittees.

## IV. COMMITTEE PROCEEDINGS

The Subcommittee on Immigration and Refugee Policy conducted 16 public hearings and 5 consultations on subjects related to reform of the Immigration and Nationality Act.

| *Hearings* | *1981* |
|---|---|
| 1. Joint Senate and House subcommittee hearings on the final report of the Select Commission on Immigration and Refugee Policy | May 5, 6, 7 |
| 2. Administration policy on immigration and refugees | July 30 |
| 3. United States as a country of mass first asylum | July 31 |
| 4. Employer sanctions | Sept. 30 |
| 5. Systems to verify authorization to work in United States | Oct. 2 |
| 6. Asylum adjudication | Oct. 14 |
| 7. Adjudication procedures | Oct. 16 |
| 8. Temporary workers | Oct. 22 |
| 9. Legalization | Oct. 29 |
| 10. Preference system | Nov. 23 |
| 11. H–2 temporary workers and nonimmigrants | Nov. 30 |
| 12. Nonimmigrant business visas and adjustment of status | Dec. 11 |
| | *1982* |
| 13. Population and immigration policy | Jan. 25 |
| 14. G-iv relief proposals | Feb. 1 |
| 15. Joint Senate and House subcommittee hearings on S. 2222/ H.R. 5872—House side | Apr. 1 |
| 16. Joint Senate and House Subcommittee hearing on S. 2222/ H.R. 5872—Senate side | Apr. 20 |

| *Consultations* | |
|---|---|
| 1. Consultation on systems to vertify authorization to work in the United States | Sept. 10, 1981 |
| 2. Consultation on asylum | Nov. 16, 1981 |
| 3. Consultation on foreign immigration laws | Dec. 7, 1981 |
| 4. Consultation on adjudication procedures | Apr. 14, 1982 |
| 5. Consultation on H–2 provisions | Apr. 15, 1982 |

Senator Simpson, on behalf of himself, Senator Grassley, and Senator Huddleston, introduced S. 2222 on March 17, 1982. The bill was referred to the Subcommittee on Immigration and Refugee Policy. A companion bill was introduced in the House of Representatives by Mr. Mazzoli on behalf of himself and Mr. Fish. Two joint hearings, with the House Subcommittee on Immigration, Refugees, and International Law, were held April 1 and April 20.

The Subcommittee on Immigration and Refugee Policy met on May 6, 1982 and adopted several technical and other amendments. By a vote of 4 to 0, the Subcommittee reported the amendment bill to the Committee, with the recommendation that favorable action be taken on it.

On May 18, 20, 25, and 27 the Committee on the Judiciary considered and discussed the bill. Several technical and other amendments were considered, as discussed below. On May 17, by a vote of 16 to 1, the

Committee ordered the amended bill reported out with recommendation that it be passed by the Senate.

The following amendments were adopted by the voice vote:

1. Simpson amendment to modify Byrd amendment by providing for current law with respect to adverse effect wage rate.

2. Grassley amendment to limit time for seeking judicial review of administrative decisions.

3. Grassley amendment to preempt state or local laws relating to the admissibility of nonimmigrant workers.

4. Kennedy amendment to clarify when H–2 labor certifications must be denied during strike or labor dispute.

5. DeConcini amendment to allow more time to complete asylum applications.

6. DeConcini's amendment to provide for a de novo administrative hearing, at petitioner's request, if labor certification is denied.

7. Metzenbaum amendment to increase the time for appeal from a deportation order.

8. Mathias amendment to add certain retired employees of international organizations to the list of G-iv visa holders granted "special immigrant" status.

The following amendments were adopted by roll call vote, as indicated:

1. Kennedy amendment to move cut-off date for legalization to January 1, 1982.

| YEAS (8) | NAYS (6) |
|---|---|
| Mathias | Dole [1] |
| Laxalt | Simpson |
| Hatch | East [1] |
| Kennedy | Grassley |
| Metzenbaum | Denton [1] |
| DeConcini | Thurmond |
| Leahy | |
| Baucus | |

[1] By proxy.

2. Kennedy amendment to delete provision authorizing the Attorney General to enter into cooperative agreements with State and local law enforcement agencies.

| YEAS (10) | NAYS (7) |
|---|---|
| Dole | Laxalt |
| Simpson | Hatch |
| Specter | East |
| Biden [1] | Grassley |
| Kennedy | Heflin [1] |
| Byrd | Thurmond |
| Metzenbaum [1] | |
| DeConcini | |
| Leahy [1] | |
| Baucus [1] | |

[1] By proxy.

3. Byrd amendment to change the standards for granting H–2 labor certifications.

| YEAS (10) | NAYS (5) |
|---|---|
| Laxalt | Dole |
| Hatch | Simpson |
| East | Kennedy |
| Grassley | Metzenbaum [1] |
| Denton [1] | Baucus |
| Specter | |
| Byrd | |
| DeConcini | |
| Heflin | |
| Thurmond | |

[1] By proxy.

The following amendments were defeated by roll call vote, as indicated:

1. Grassley amendment delaying legalization to permanent resident until system to verify employment eligibility is effective, and lengthening minimum residence period.

| YEAS (4) | NAYS (10) |
|---|---|
| Hatch | Laxalt [1] |
| East | Simpson |
| Grassley | Specter |
| Denton [1] | Biden |
| | Kennedy |
| | Metzenbaum |
| | DeConcini |
| | Leahy |
| | Baucus |
| | Heflin |

[1] By proxy.

2. Kennedy amendment to end employer sanctions in 3 years unless the President certifies that no unlawful discrimination against minorities has occurred.

| YEAS (3) | NAYS (11) |
|---|---|
| Kennedy | Mathias |
| Metzenbaum | Laxalt [1] |
| Heflin | Hatch |
| | Dole |
| | Simpson |
| | East |
| | Denton [1] |
| | Specter [1] |
| | DeConcini |
| | Baucus |
| | Thurmond |

[1] By proxy.

3. Kennedy amendment to restore 5th Preference.

| YEAS (4) | NAYS (8) |
|---|---|
| Kennedy | Laxalt |
| Metzenbaum | Dole |
| DeConcini | Simpson |
| Leahy | Grassley |
| | Denton [1] |
| | Baucus |
| | Thurmond |
| | Hatch [1] |

[1] By proxy.

4. Kennedy amendment to provide final authority over H–2 regulations in the Secretary of Labor.

| YEAS (4) | NAYS (10) |
|---|---|
| Biden [1] | Laxalt |
| Kennedy | Hatch |
| Metzenbaum | Dole |
| Leahy | Simpson |
| | East [1] |
| | Grassley |
| | Denton [1] |
| | DeConcini |
| | Baucus |
| | Thurmond |

[1] By proxy.

5. Kennedy amendment to provide for a class action type of judicial review of asylum cases.

| YEAS (7) | NAYS (8) |
|---|---|
| Specter | Mathias |
| Kennedy | Laxalt |
| Metzenbaum [1] | Hatch [1] |
| DeConcini | Dole |
| Leahy [1] | Simpson |
| Baucus | East |
| Heflin [1] | Grassley |
| | Denton [1] |

[1] By proxy.

6. Kennedy amendment to eliminate requirement that numbers for other family reunification categories be reduced if numbers for "immediate relatives" increase.

| YEAS (5) | NAYS (7) |
|---|---|
| Kennedy | Laxalt |
| Metzenbaum | Hatch [1] |
| DeConcini | Dole |
| Leahy | Simpson |
| Baucus | Grassley |
| | Denton [1] |
| | Thurmond |

[1] By proxy.

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7. Metzenbaum amendment to include unmarried sons and daughters of permanent residents under 26 in 3rd Preference.

| YEAS (5) | NAYS (8) |
|---|---|
| Kennedy | Mathias |
| Metzenbaum | Laxalt |
| DeConcini | Hatch |
| Leahy | Simpson |
| Baucus | East [1] |
| | Grassley |
| | Denton [1] |
| | Thurmond |

[1] By proxy.

8. Metzenbaum amendment to provide discretionary judicial review in asylum cases.

| YEAS (3) | NAYS (12) |
|---|---|
| Kennedy | Mathias |
| Metzenbaum | Laxalt |
| Hefli | Hatch |
| | Dole [1] |
| | Simpson |
| | East [1] |
| | Grassley |
| | Denton [1] |
| | DeConcini |
| | Leahy |
| | Baucus |
| | Thurmond |

[1] By proxy.

9. DeConcini amendment to require President to submit report on implementation of employer sanctions and on whether discrimination or unnecessary regulatory burdens have resulted, and to recommend whether program should be continued.

| YEAS (3) | NAYS (11) |
|---|---|
| Hatch | Mathias |
| DeConcini | Laxalt [1] |
| Baucus | Dole |
| | Simpson |
| | East |
| | Grassley |
| | Denton [1] |
| | Kennedy |
| | Metzenbaum |
| | Heflin |
| | Thurmond |

[1] By proxy.

## V. SECTION-BY-SECTION ANALYSIS

*Section 1—short title: references in act*

Section 1 provides that the short title of the legislation is the "Immigration Reform and Control Act of 1982" and that amendments spe-

cified in the legislation are amendments to the provisions of the Immigration and Nationality Act ("INA"), unless otherwise specified.

## TITLE I—CONTROL OF ILLEGAL IMMIGRATION

### PART A—EMPLOYMENT

*Section 101—Control of unlawful employment of aliens*

Section 101(a)(1) inserts a new section 274A into the Immigration and Nationality Act, concerning the unlawful employment of aliens. Subsection (a) of that new section makes it unlawful (1) for anyone after enactment to hire, or for consideration to recruit or refer, for employment in the United States an alien who is known to be unauthorized to be so employed or for an employer of four or more employees to hire anyone without complying with the verification procedure described in subsection (b), and (2) to continue to employ an alien lawfully hired after enactment after acquiring knowledge that the alien is not authorized to be so employed. The phrase "for consideration" was inserted to exclude such activities as referrals by friends or recruitment by corporations with respect to their own employees. The phrase "for consideration to recruit or refer" is intended to include the activities of employment agencies, executive search firms, and labor union hiring halls.

This section is intended to be broadly construed with respect to coverage so that, with the kinds of exceptions noted, all employers, recruiters, and referrers are covered: individuals, partnerships, corporations and other organizations, non-profit and profit, who employ, recruit, or refer persons for employment in the United States.

Subsection (b) of the new section 274A sets forth a procedure for the verification of work eligibility. It requires that an employer with four or more employees attest (under penalty of perjury) on a form approved by the Attorney General that such employer has examined what appears on its face to be either the employee's U.S. passport, or both the employee's Social Security card or United States birth certificate and an identification document, such as an alien documentation, identification, and telecommunication (ADIT) card, driver's license or other state identification card, or (for those under 16 and in States that do not issue identification documents) a reliable personal identity document which has been approved by the Attorney General. It also requires the employee to attest on such form that the employee is a citizen or permanent resident alien, or is otherwise authorized to be so employed. The employer is required to retain the completed form, and make it available for inspection by the Immigration and Naturalization Service, for five years or one year after the date the employment is terminated, whichever is later. The exclusion of recruiters and referrers from the requirements of this section was intended to prevent duplicative recordkeeping. The ultimate employer would keep records on any employee actually hired. The exclusion of small businesses was also intended to avoid undue burden on the smallest businesses, which are estimated to represent 50 percent of employers while only 5 percent of employees. The provision for a penalty for merely failing to comply with the verification procedure, even if the applicant were a U.S. citizen, is designed to make it less

likely that an employer will discriminate by requiring verification only of those he believes "look or sound foreign."

Subsection (c) of the new section requires the President, within 3 years, to implement such changes in or additions to the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility. The system must reliably verify that an applicant is the person he claims to be and that such a person is eligible to work. If the new system will involve examination by an employer of any document, the bill requires that such document be in a form which is resistant to counterfeiting and tampering, unless the President and the Judiciary Committees of Congress agree that such form is unnecessary to the reliability of the system. The Committee intends that the phrase "form which is resistant to counterfeiting and tampering" be interpreted to mean a form specially designed to be so resistant, through the use of fine engraving, special material, magnetic or other coding, or otherwise. Personal information in the system would be made available only to the extent necessary to verify that the individual is authorized to be employed. Such verification could only be withheld because the individual was an alien not authorized to be employed. The system may not be used for law enforcement, other than as related to enforcement of the new section or the provisions relating to fraudulent use of documents. If the system were to involve presentation of a document or card designed specifically for use under the verification system, it could not be required to be presented for any other purpose (except in the course of enforcing the law against fraudulent use of documents) or to be carried on the person.

Subsection (d)(1) of the new section provides graduated penalties for the knowing employment, or recruitment or referral for consideration, of unauthorized aliens: a civil penalty of $1,000 for each alien for the first violation, a civil penalty of $2,000 for each alien for the second or a subsequent violation, and a misdemeanor (criminal) penalty of a $1,000 fine, six month imprisonment, or both, for a pattern or practice of violation.

Subsection (d)(2) authorizes the Attorney General to bring a civil action to enjoin persons engaging in a pattern or practice of employment, recruitment, or referral in violation of subsection (a). It is expected that the requirements of this section will for the most part be voluntarily complied with, but selective enforcement actions by the Attorney General will assure even greater compliance.

Subsection (d)(3) provides for a civil penalty of $500 for each instance in which an employer fails to comply with the verification and recordkeeping requirements of subsection (b).

Subsection (d)(4)(A) provides that before assessing a civil penalty against a person or entity the Attorney General must provide the person or entity with notice and the opportunity to request a hearing before an immigration officer designated by the Attorney General. The Committee intends that the provisions of the Administrative Procedure Act (APA) not apply to such hearings. Subsection (d)(4)(B) provides that if a person fails to pay a civil penalty, the Attorney General may sue in Federal district court to collect the amount due. The court will decide the suit based solely on the administrative record developed in the case and will accept the findings of fact of the

Attorney General if supported by substantial evidence in the administrative record considered as a whole.

Subsection (e) of the new section requires that in any documentation of an alien's authorization of employment the Attorney General shall conspicuously indicate any limitations on such authorization.

Subsection (f) of the new section provides that the provisions of this section preempt State and local laws providing civil or criminal sanctions for employment, or recruitment or referral for employment, of aliens not authorized to be employed.

Subsection (g) authorizes the appropriation of $10,000,000 for fiscal year 1983 for development of the new verification system and for monitoring the implementation of this section.

Section 101(a)(2) provides that, although the requirements of Section 274A take effect immediately, during the first six months notice will be given as to apparent violations of these provisions, but no penalty shall be assessed, and during the subsequent six month period the first offense will result only in a warning. During the first year after enactment, the Attorney General, in cooperation with the Secretary of Commerce, the Secretary of Labor, the Secretary of Agriculture, and the Administrator of the Small Business Administration, is required to disseminate forms and information to employers, employees, and the public concerning these requirements. $10,000,000 are authorized to be appropriated for fiscal year 1983 for this purpose.

*Section 102—Fraud and misuse of certain documents*

Section 102(a) amends 18 U.S.C. 1546 by (1) extending the criminal penalties for the use, manufacture, or sale of counterfeit or altered entry documents or those relating to another individual to include all other documents which may be used to show employment eligibility or to obtain documents which may be so used and (2) increasing the fine for this violation from $2,000 to $5,000 (without changing the potential imprisonment of five years).

PART B—ENFORCEMENT AND FEES

*Section 111—Immigration and Naturalization Service enforcement activities*

Section 111 expresses the sense of Congress that an increase in Immigration and Naturalization Service border patrol and other enforcement activities is a critical element of the overall immigration proposal contained in the legislation, and that this increase will be appropriately monitored and effected through the annual authorization of appropriations process.

*Section 122—Unlawful transportation of aliens to the United States*

Section 112 amends the provisions of the INA respecting criminal penalties for bringing in and harboring aliens. First, it eliminates the present provision (the so-called "Texas Proviso") which prevents employment from being deemed to constitute harboring an alien. By eliminating the "Texas Proviso" the Committee does not intend that employment in itself would constitute "harboring."

Second, the section adds a new provision which makes it a criminal offense (subject to a minimum fine of $2,500 and up to one year's imprisonment, with additional penalties for a second offense or in ag-

gravated circumstances) to bring an unauthorized alien to the United States, without regard to whether or not the entry was fraudulent, evasive, or surreptitious. This provision is required because of the judicial construction of section 274 of the INA in *Anaya* v. *United States*, 509 F. Supp. 289 (S.D. Fla. 1980).

*Section 113—Fines*

Section 113 requires the Attorney General to impose fees for an alien's use of border or other Immigration and Naturalization Service facilities in an amount commensurate with the cost of maintenance and operation of these facilities.

PART C—ADJUDICATION PROCEDURES AND ASYLUM

*Section 121—Inspection and exclusion*

Section 121 amends the INA to provide that if an immigration officer at the port of entry determines that an alien does not have the documentation required for entry, does not have any reasonable basis for legal entry, and has not applied for asylum, such alien must be summarily excluded from entry into the United States, without any hearing or further inquiry. If the alien claims asylum, the exclusion hearing is limited to the asylum issue.

This section also requires the Attorney General to establish a procedure to assure that this summary exclusion procedure is not used with respect to an alien unless some inquiry has been made into such alien's reason for unlawfully seeking entry into the United States. It is the intention of the Committee that this be a general inquiry and should not include advice of any right to claim asylum or leading questions with respect to persecution. Only if the alien's answers to such general inquiry provide evidence that the alien may have a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion should the immigration officer specifically inquire about persecution and the alien's desire to claim asylum.

*Section 122—United States Immigration Board and establishment of Immigration Judge System*

Section 122(a) adds a new section 107 to the INA, providing for a United States Immigration Board and the use of immigration judges who will be within the Department of Justice, but, unlike the present special inquiry officers, not within the Immigration and Naturalization Service.

The statutory provision is intended to upgrade the existing structure and provide increased independence, authority, and stature. It continues in the new Board the jurisdiction of the present Board of Immigration Appeals.

Subsection (a) of the new section provides that the Board shall be composed of a chairman and eight other members appointed by the Attorney General. Members will have staggered terms of six years, and are given Civil Service protection. They will be compensated at the rate for GS–17 (GS–18 in the case of the chairman). The chairman will be responsible for administrative operations of the Board and promulgating rules of practice and procedure for the Board and the immigration judges.

Subsection (b) of the new section provides for the Board's authority to hear and determine appeals from final decisions of immigration judges. In hearing appeals, the Board will act in panels of 3 or more members designated by the chairman, except that individual members will be able to decide nondispositive motions. The Board shall review the decisions of immigration judges based on the administrative record and will not change a finding of fact if it is supported by substantial evidence in the record considered as a whole. The Committee intends that the provisions of the Administrative Procedure Act (APA) not apply to Board adjudications. The Board's final decisions will be binding on all immigration and consular officers, unless otherwise modified or reversed by a court or by the Attorney General. If the Attorney General determines it to be necessary for the national interest, the Attorney General will be able, within 30 days of the final decision of the Board, to provide that the case be certified for him to review. If he does not render a decision within 30 days, the decision of the Board shall be considered final and not be subject to further review by the Attorney General.

Subsection (c) of the new section provides for the chairman to appoint, in accordance with Office of Management and Budget procedures, up to 70 immigration judges, to set their rate of compensation (not to exceed GS–16), and to designate a chief immigration judge (to be compensated at the GS–17 rate). The chief immigration judge will be responsible for administrative activities affecting immigration judges and shall assign judges to hear cases. The immigration judges will hear exclusion (other than summary exclusion), deportation, suspension of deportation, rescission of adjustment of status, and asylum cases. In hearing the cases, the judges will be authorized to administer oaths, determine applications for discretionary relief, and exercise such of the Attorney General's discretionary authority as the Attorney General delegates to them in order to effect a just and equitable disposition of cases before them. The Committee intends that the provisions of the Administrative Procedure Act (APA) not apply to adjudications by immigration judges.

Section 122(b) provides that aliens will have 15 days in which to appeal to the U.S. Immigration Board from decisions of the immigration judges.

*Section 123—Judicial review*

Section 123(a) amends the existing provisions of section 106(a) of the INA concerning judicial review to (A) require that judicial review be sought within 45 days (rather than 6 months) of the date of a deportation order, (B) eliminate court review of the issue of asylum, and (C) eliminate statutory habeas corpus review of custody in deportation proceedings.

Section 123(b) provides that there shall be no judicial review of exclusion or asylum orders, except as is available under the constitutional right to seek a writ of habeas corpus. The section also prohibits courts of the United States from reviewing Board or immigration judge decisions with respect to the reopening or reconsideration of exclusion, deportation, or asylum determinations; the Attorney General's denial of stays of exclusion or deportation orders; or summary exclusion. This section also provides that if the Attorney General re-

verses or modifies the Board's decision under INA section 107(b)(5)(B), as added by this bill, then judicial review is provided to the same extent as in the case of a final order of the Board on deportation, as provided in INA section 106(a) (an appeal to a circuit Court of Appeals, which may not reverse any finding of fact supported by substantial evidence).

Section 123(f) provides that an action for judicial review of any administrative action, other than a final order of deportation, must be filed within 30 days of the final administrative action, or of the date of enactment, whichever is later.

*Section 124—Asylum*

Section 124(a) amends section 208(a) of the INA respecting applications and hearings on asylum. The provisions establish a statutory procedure under which aliens make application for asylum.

Under paragraph (1) an alien in deportation or exclusion proceedings may not file a notice of intention to apply for asylum more than 14 days, nor complete the application more than 35 days, after the date notice of the proceeding was served unless such alien can make a clear showing that there have been changed circumstances in the country of the alien's nationality since the date the proceedings began. Aliens previously denied asylum cannot apply again unless they can show such changed circumstances since the date asylum was previously denied.

Under paragraph (2) asylum applications are considered before immigration judges who have been specially designated by the United States Immigration Board, who have had special training in international relations and international law, and who have not previously served as special inquiry officers.

Under paragraph (3) asylum hearings are open to the public unless the applicant requests otherwise. To the extent practicable the hearing shall be conducted in an informal, nonadversarial atmosphere, except that the applicant is entitled to be assisted by counsel without charge to the government or unreasonable delay, to present evidence, and to examine and cross-examine witnesses. A complete record of the hearing is maintained. The judge's determination must be solely on the evidence produced at the hearing. The Committee intends that the provisions of the Administrative Procedure Act (APA) not apply to asylum adjudications.

The new section also provides that the Secretary of State shall, on a continuing basis and without reference to individual applications, make available to the Attorney General reports on the condition of human rights in all countries. These country profiles will provide to the immigration judge who adjudicates the asylum application the necessary information on the country where the applicant claims to fear persecution. It is expected that reports by the Secretary of State relating to whether or not persons in such country who are of the same race, religion, nationality, social group, or political opinion as the applicant are generally subject to persecution because of such characteristics, will be determinative unless the applicant presents evidence that he would be treated differently from such persons.

The Attorney General is to notify the Secretary of State of individual asylum claims so that the Secretary of State may comment if he

wishes. Immigration judges are directed not to delay the hearing in order to receive comments from the Secretary of State, nor is the Secretary of State under any obligation to comment on any individual case. The Committee expects that procedures and criteria for the separate notification of the Department of State concerning certain categories of asylum cases will be developed by the Attorney General, in consultation with the Secretary of State, and set forth in regulations.

Paragraph (4) provides that the Attorney General may, in his discretion, grant asylum only if the immigration judge determines that the alien meets the definition of "refugee," as defined by INA section 101(a)(42), and does not meet one of the conditions set forth in INA section 243(h)(2), such as having participated in the persecution of others, having been convicted of a serious nonpolitical crime, and being a danger to the security of the United States (grounds which would permit return, or *refoulment*, of the alien to the country of origin under the Protocol Relating to the Status of Refugees, ratified by the U.S. Senate in 1968). Furthermore, the Committee intends that aliens within a class described in INA section 212(a) would not be granted asylum, subject to the same exceptions set forth in INA section 207(c)(3) for the admission of refugees. This section does not change existing law that the Attorney General is not required to grant asylum. However, deportation of aliens denied asylum is subject to the treaty obligations of the United States under the Protocol and the provisions of INA section 243(h) (see discussion of Sec. 124(b) below). Such treaty obligations require that the United States not return an alien to a country where his "life or freedom" would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. Therefore, where the "persecution" involved is not so severe as to threaten life or freedom, or where the applicant can be deported to a country other than his country of nationality without such severe persecution, then the Attorney General may deport the alien.

Under paragraph (5), the applicant has the burden of establishing eligibility for asylum.

Paragraph (6) prohibits the reopening of an asylum application without a clear showing that there have been changed circumstances since the date of the previous determination.

*Section 124(a)(2)* amends section 208(b) of the INA to clarify that the Attorney General can terminate asylum if one of the conditions described in INA section 243(h)(2) is met.

*Section 124(a)(3)* amends section 208 to clarify that the procedures in that section are the exclusive procedures for claiming asylum.

*Section 124(b)* provides that an application for relief under INA section 243(h) shall also be considered to be an application for asylum under section 208. The Committee does not intend, however, to change the mandatory nature of relief under INA section 243(h). Although, as already indicated, a grant of asylum under INA section 208 is a matter of discretion in the Attorney General, aliens denied asylum could not, with certain exceptions, be deported or returned to any country where such alien's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. This does not prevent the alien from

being deported to some other country as provided in INA section 237(a) or 243(a), if the threat does not exist in such other country.

Therefore, the Committee intends that the immigration judge adjudicating the application will determine:

(1) whether or not the applicant satisfies the definition of "refugee" and may otherwise be considered for the discretionary granting of asylum by the Attorney General under INA section 208, and

(2) if the applicant is denied asylum, whether or not the applicant qualifies for the mandatory relief of INA section 243(h). Either or both of these determinations are appealable to the United States Immigration Board.

*Section 125—Effective dates and transition*

*Section 125(a)* provides the general rule that the amendments made by part C of Title I of the bill take effect upon enactment, with certain exceptions. Such exceptions are as follows: the changes in adjudication and asylum procedures (*other than* those relating to summary exclusion (§ 121), the modification of the standard of proof in administrative deportation proceedings (§ 122(c) and (d)), the reduction of the time period for filing deportation appeals (§ 123(a)(2)), the modification of the standard for judicial review of evidence in deportation cases (§ 123(a)(5)), the striking out of language permitting habeas corpus review of cusody in all deportation cases (§ 123(a)(9)), and the requirement that INA section 243(h) claims be adjudicated in INA section 208 under asylum procedures (§ 124(b)) do *not* apply with respect to exclusion and deportation cases begun before the "hearing transitional date" established pursuant to § 126(c)(1)(A) or asylum applications filed before the "asylum transition date" established pursuant to §126(c)(1)(B). However, certain new provisions relating to asylum (namely, certain provisions restricting asylum claims (§ 208(a)(1)(B) of INA), establishing rights of the asylum applicant at the hearing (§ 208(a)(3) of INA), standards for determination of asylum (§ 208(a)(4) of INA), restrictions on reopening asylum determinations (§ 208(a)(6) of INS), and adding a basis for terminating asylum (§ 208(b)(2)) apply to pending asylum claims with appropriate transition provisions to take into account hearings previously begun and the fact that special inquiry officers will continue (until the "asylum transition date") to handle asylum claims. The section also permits immigration judges to succeed special inquiry officers in cases begun before those dates.

*Section 125(b)* requires the Attorney General to appoint the chairman and other members of the U.S. Immigration Board within 45 days after enactment, in order to provide for an expeditious transition to the new adjudication procedures. Within 45 days of the date the chairman and a majority of the Board has been appointed, the chairman, in consultation with the Attorney General, is required to select a date for the U.S. Immigration Board to assume and continue present functions of the Board of Immigration Appeals. The chairman is then required to promptly provide for the interim rules of practice under the new system. No later than 60 days after the promulgation of such interim new rules, the Attorney General is required to appoint at least 10 asylum judges, who will receive special training under the supervision of the U.S. Immigration Board.

*Section 125(c)* provides for the designation by the U.S. Immigration Board, in consultation with the Attorney General, of transition dates for the new adjudication and asylum procedures. The "hearing transition date" is to be within 45 days of the date the interim final rules of practice are promulgated, and the "asylum transition date" is an appropriate date after the new interim final rules for asylum procedures have been issued and a sufficient number of specialized asylum judges have been appointed and trained. Before these dates, newly appointed immigration judges may conduct any proceeding or hearing now conducted by a special inquiry officer under the existing rules applicable to special inquiry officers.

*Section 125(d)* permits present special inquiry officers to serve as acting immigration judges (other than in asylum proceedings) for two years after the hearing transition date. If they are not subsequently appointed to the U.S. Immigration Board or as immigration judges, they shall be credited (for such purposes as seniority) with having been employed in the Department of Justice as special inquiry officers during such period.

*Section 125(e)* acts as a saving clause for existing cases and permits the U.S. Immigration Board and immigration judges to serve as a continuation of the Board of Immigration Appeals and special inquiry officers, respectively.

*Section 125(f)* requires the Attorney General to maintain in grade for at least one year after termination of the BIA present members of the BIA, if they have previously served for 3 years as such, are not appointed as members of the U.S. Immigration Board or as immigration judges, and continue to be employed by the Department of Justice.

*Section 125(g)* authorizes the appropriation of $20 million for fiscal year 1983 to implement the various changes, including the establishment of the U.S. Immigration Board, the adoption of the immigration judge system, the special training of asylum and other immigration judges, and the promulgation of new rules.

*Section 126—Technical and conforming amendments*

*Section 126* makes various technical and conforming changes to reflect (1) changes in reference from "special inquiry officer" to "immigration judge" and from "further inquiry" to "an exclusion hearing", and (2) the transfer of certain authority from the Attorney General to the U.S. Immigration Board or its chairman.

PART D—ADJUSTMENT OF STATUS

*Section 131—Limitations on adjustment of nonimmigrant to immigrant status by visa abusers*

*Section 131(a)* amends section 245(c)(2) of the INA to provide that aliens who have failed to maintain continuously a legal status since entry in the United States will not be eligible to adjust from nonimmigrant to immigrant status within the United States. The present statutory provision prohibits such adjustment only if a nonimmigrant has failed to maintain legal status because of unauthorized employment.

It is the intention of the Subcommittee to make adjustment of status a much less frequently used method of permanent entry into the United States. It is expected that the Administration will continue to implement immigration entry as before and not make special provisions for the obtaining of visas in border countries.

*Section 131(b)* clarifies that this change applies to applications already filed, but not yet acted upon.

## TITLE II—REFORM OF LEGAL IMMIGRATION

### PART A—IMMIGRANTS

*Section 201—Numerical limitations*

*Section 201(a)* amends section 201(a) of the INA to provide a new limit on the aliens who may receive immigrant visas or otherwise acquire the status of aliens lawfully admitted for permanent residence. Other than "immediate relatives" of U.S. citizens (spouses, children, and parents of adult citizens), "special immigrants" defined in INA section 101(a)(27), refugees, asylees, and certain other special categories, new permanent residents are limited to the groups:

(a) family reunification preference immigrants, in a number equal to 350,000 minus the number of "immediate relatives" and aliens in certain other small categories admitted with or otherwise acquiring permanent resident status in the prior year, plus the independent preference and nonpreference visa numbers (see next paragraph) not used in the prior year;

(b) independent preference and nonpreference immigrants, in a number equal to 75,000 minus the number of "special immigrants" (other than returning permanent residents) and aliens in certain other small categories admitted with or otherwise acquiring permanent resident status in the prior year, plus the family reunification preference visa numbers not used in the prior year.

*Section 201(b)* amends section 202(a) of the INA to provide that except for the contiguous countries of Mexico and Canada, the ceiling on preference immigrants from a single country will be 20,000 minus the number of "immediate relatives," "special immigrants," and aliens in certain other small numerically unlimited categories admitted with or otherwise acquiring permanent resident status in the prior year in excess of 20,000. For example if in 1982 the number admitted in such categories from a particular country totaled 25,000, then in 1983 the ceiling on preference immigrants from such country would be 15,000 (20,000 minus the 5,000 excess of 25,000 over 20,000). This would not in any way affect the number of "immediate relatives" or aliens in other numerically unlimited categories which could be admitted from that country in 1983. However, any excess over 20,000 would be subtracted from 20,000 in order to obtain the ceiling for preference immigrants in 1984.

The per-country ceiling for Mexico and Canada are increased to 40,000 each, minus such excess of "immediate relatives," etc. over 20,000 in the prior year. In addition, either country will be entitled to the unused visa numbers of the other country from the prior year. For example, if in 1982, 10,000 perference immigrants were admitted from Canada, and 40,000 from Mexico and neither country sent "im-

mediate relatives," etc. in excess of 20,000, then in 1983 the ceiling on preference immigrants from Mexico would be 70,000 (40,000 plus the excess of Canada's permitted 40,000 over its actual 10,000) and the ceiling on those from Canada would again be the base 40,000. If, instead, in 1982 25,000 "immediate relatives" entered from Mexico and the other figures were the same, then Mexico's preference ceiling would be 65,000 (70,000 minus the "immediate relative" excess of 5,000 over 20,000).

*Section 202—Preference allocation systems*

*Section 202(a)* amends the provisions of section 203 of the INA relating to the preference categories. Instead of the present 7-tier preference and nonpreference system, incorporating both family reunification and employment-related categories, there are established separate preference groups for family reunification immigrants and for independent immigrants.

Under the family reunification group of preference categories, visas are first made available for unmarried sons and daughters of U.S. citizens, in a number up to 15 percent of the annual numerical limitation in INA section 201(a)(1), plus any numbers not used for the fourth preference (see below). This corresponds to the present first preference.

Second, visas are made available for (i) spouses and children of aliens lawfully admitted for permanent residence and (ii) those unmarried sons and daughters over 21 years of age who had received approval of petitions for the present second preference on or before March 1, 1982 and who, at the time of application for admission, still qualify under the present second preference standards. The ceiling is 65 percent of the annual numerical limitation, plus any numbers not used for the first family preference. The present second preference includes all unmarried sons and daughters, whether adults or children. The increase in the percentage available for this preference was in part designed to meet the expected demand in this preference arising from the legalization program. The elimination of unmarried sons and daughters over 21 reflects the Committee's view that the limited visas available for this preference should be used to reunite "nuclear families."

Third, visas are made available for marrried sons and daughters of U.S. citizens in a number up to 10 percent of the annual numerical limitation, plus any numbers not used for the first or second family preference. This corresponds to the present fourth preference.

Fourth, visas are made available for individuals who on or before March 1, 1982 had received approval of a petition for the present fifth preference status (brothers and sisters of adult U.S. citizens) and who, at the time of application for admission, still qualify under the present fifth preference standards. The ceiling is 10 percent of the annual numerical limitation, plus any numbers not required for the previous preference categories. The abolition of the fifth preference after March 1, 1982 is intended to enable additional visas to be provided to the independent and other family reunification categories. Furthermore, the backlog of active petitions for this category at consular offices abroad is now nearly 700,000, over three times the level in 1978. Less than half are the brothers and sisters themselves. The rest are the spouses and children of such brothers and sisters.

Under the independent group of preference categories, visas are first made available to aliens of exceptional ability in the sciences, arts, professions, or business, up to the amount of the annual limitation in INA section 101(a)(2). This corresponds to the existing third preference except that it includes business on the list of fields in which exceptional ability qualifies an alien for a special preference and provides that exceptional ability is also required for members of the professions and that possession of a degree or similar award from a school or a license to practice a profession is not in itself sufficient to establish exceptional ability. Authority is granted to the Attorney General to waive with respect to aliens in this category the portion of the labor certification requirement relating to a job offer. This recognizes the fact that many persons of exceptional ability will be independent contractors, not employees.

Second, visas not allocated to the first category are made available to skilled workers. This corresponds to part of the existing sixth preference.

Third, visas not allocated to the first two categories (and not in excess of 10 percent of the independent immigrant annual numerical limitation) are next made available to alien investors who have invested or shown an intent to invest substantial capital (in an amount to be set by the Attorney General, but not less than $250,000) in an enterprise of which the alien will be a principal manager and which will create at least four full-time jobs for U.S. citizens or permanent residents, other than relatives of the investors. *Section 202(d) amends* section 241(a)(9) of the INA to provide for deportation of aliens who enter the United States as investors but fail to invest or maintain for one year the substantial investment required.

Fourth, visas are made available to other qualified immigrants in the chronological order in which they qualify.

All independent immigrant visas except for the third (investor) category require a labor certification, as described in INA section 212(a)(14). A waiver of the job offer portion of the labor certification for immigrants under the first (exceptional ability) independent category may be granted by the Attorney General pursuant to the provisions of INA section 212(d)(11), as added by the bill.

A new section 203(c) of the INA provides that where the number of qualified immigrants from a particular country is greater than the per-country ceiling, to the degree practicable and without limiting the number of preference immigrants from such country to a level below that which is permitted by the per-country ceiling in effect, visas should be allocated so that the ratio of family reunification immigrants (including immediate relatives and fiances) to independent immigrants (including special immigrants) equals 4.65 to 1. This ratio represents the worldwide allocation of 350,000 family reunification visas and 75,000 independent visas and serves to assure within countries the kind of mixture which is provided under current section 202(e) of the INA, which is repealed by section 202(b) of this Act.

*Section 203—Labor certification*

*Section 203* amends section 212(a)(14) of the INA to provide several changes in the labor certification process. These changes include

(1) clarifying that the Secretary of Labor must consider the availability of workers throughout the United States, rather than only at the place where the labor will be performed; (2) requiring that certification must include a finding that sufficient workers in the United States could not be trained within a reasonable period of time; (3) authorizing the Secretary of Labor to use general labor market information in considering the certification, rather than only an analysis of the impact of the specific alien in the specific job; (4) providing that certification decisions of the Secretary of Labor, including the use of general labor market information, cannot be overturned by a court except on the basis of compelling evidence that the decision was arbitrary and capricious; and (5) authorizing the Attorney General to waive the requirement of a job offer with respect to an alien seeking to obtain the status of an immigrant under section 203(b)(1) of the INA.

*Section 204—G–4 special immigrants*

*Section 204(a)* adds a new category of "special immigrant" to those already included in INA section 101(a)(27). This category would include an immigrant who is the unmarried son or daughter of an officer or employee, or former officer or employee, of an international organization such as the U.N. or World Bank, if such immigrant (i) while in the status of a nonimmigrant under INA section 101(a)(15)(G)(iv) or 101(a)(15)(N) has resided and been physically present in the U.S. within the 7 year period prior to the date application for special immigrant status is made and for at least 7 years (in the aggregate) between the ages of 5 and 18 and (ii) applies no later than his 25th birthday or 6 months after enactment, whichever is later.

Special immigrant status is also provided to the surviving spouse of an officer or employee of such an international organization who (i) while in G–iv or N status has resided and has been physically present in the United States as such a spouse within the 7 year period prior to the date application for special immigrant status is made and for at least 15 years (in the aggregate) before the death of his or her spouse, and (ii) applies no later than 6 months after the spouse's death or 6 months after enactment, whichever is later.

Finally, special immigrant status is provided to a retired officer or employee of such an international organization who (i) while in G–iv or N status has resided and been physically present in the U.S. within the 7 year period prior to the date application for special immigrant status is made and for at least 20 years (in the aggregate) before the date of his retirement from such organization, and (ii) applies no later than 6 months after such retirement or 6 months after enactment, whichever is later. The spouse of such a retired officer or employee who receives special immigrant status, who is accompanying or intending to join such retired officer or employee as a member of his immediate family also will receive special immigrant status.

*Section 204(b)* amends section 101(a)(15) of the INA to create a new "N" nonimmigrant status for (i) parents of children who are given special immigrant status, while the qualifying children are minors, (ii) the other children of such parents and the children of surviving spouses or retired officers or employees given special immigrant status. The Committee intends that parents receiving such nonimmigrant status will receive work authorization.

*Section 205—Effective dates and transition*

*Section 205(a)* sets the effective date for sections 201, 202, and 203 as October 1, 1983. The provisions of section 204 take effect upon enactment.

*Section 205(b)* provides a transition rule whereby aliens who have filed preference petitions before the effective date will have their petitions considered under the corresponding new preference categories, with the same priority dates that they had previously if they still qualify (in some cases the categories under the new preference system do not correspond precisely to the categories under the old preference systems. Furthermore, if the circumstances of the alien change, for example if he marries or if his U.S. relative dies, he may no longer qualify for the preference).

PART B—NONIMMIGRANTS

*Section 211—H–2 workers*

*Section 211(a)* amends the nonimmigrant worker provision to distinguish temporary agricultural labor or services (class (a)) from other temporary services or labor (class (b)).

*Section 211(b)* amends the procedure for obtaining approval of H–2 petitions. Under the new procedure aliens can be admitted to perform temporary agricultural labor and services for no more than 8 months in any calendar year, except in the case of agricultural labor or services for which the Secretary of Labor recognized before enactment that longer periods were required, which may exceed one year.

The exception allowing admission for periods longer than one year pertains to the particular historical case of the sheep-raising industry. Aliens have been admitted under the H–2 provisions of the Act to work as range sheepherders since 1958. They have been allowed to stay for three-year periods without mandatory return to their country of origin. This provision will allow the continuation of that practice under the new law.

In addition, a petition for any kind of H–2 worker cannot be approved unless the petitioner has applied for a certification from the Secretary of Labor that (i) there are not sufficient workers who are able, willing, qualified, and who will be available at the time and at the place needed to perform the required labor and (ii) the employment of aliens will not adversely affect the wages and working conditions of workers similarly employed in the United States. The requirement that in every case employers must make a nationwide recruitment and hiring effort has been deleted as excessively burdensome and because it is not currently required by the Department of Labor. However, the Committee intends that in making its certification decision with respect to particular employment, the Department of Labor will continue to consider U.S. migrant workers and U.S. citizens from Puerto Rico who are "able, willing, qualified and available" workers for such employment. The requirement that the employment of aliens not adversely affect the wages and working conditions of workers similarly employed in the United States is not intended to require the Department of Labor to change its existing practice of determining adverse effect wage rates on a state-by-state basis. The Secretary of Labor may charge an application fee covering the reasonable costs of processing the application.

The Secretary of Labor may not approve a labor certification with respect to an alien who entered as a temporary worker during the previous five years and violated the terms of such previous admission or for an employer if such employer during the previous two years violated an essential term or condition of a labor certification or did not pay a penalty for such violations, as assessed by the Secretary of Labor. However, such an employer may not be denied certification for more than one year for any such violation.

In addition, the Secretary may not approve a certification for an employer if there is a strike or lock-out in the course of a labor dispute which under the regulations precludes such certification. Current regulations promulgated by the Department of Labor state:

> 20 CFR Sec. 655.203(a): *Assurances.* As part of the temporary labor certification application, the employer shall include assurances, signed by the employer, that:
> (a) The job opportunity is not:
> (1) Vacant because the former occupant is on strike or being locked out in the course of a labor dispute; or
> (2) At issue in a labor dispute involving a work stoppage.

Furthermore, current regulations promulgated by the Immigration and Naturalization Service state:

> 8 CFR Sec. 214.2(h)(10): *Effect of labor dispute involving a work stoppage or layoff of employees.* A petition shall be denied if a strike or other labor dispute involving a work stoppage of employees is in progress in the occupation and at the place of beneficiary is to be employed or trained; if the petition has already been approved, the approval of the beneficiary's employment or training is automatically suspended while such strike or other labor dispute is in progress.

It is the Committee's view that the regulations of the Immigration and Naturalization Service and the Department of Labor now in force with respect to strikes and lockouts together establish appropriate standards. If such regulations are changed, the statutory reference to "regulations" is to be interpreted to refer to the new regulations.

The Attorney General is required to provide for such procedures for the entry and exit of H–2 workers as may be necessary to carry out this section.

The section also provides that employers are not required to file for temporary agricultural workers more than 80 days before the labor or services are required.

The Secretary of Labor is directed to make the certification at least 20 days before the date such labor or services are required if the employer has complied with the criteria for certification and if the employer has not found or been referred qualified individuals who have agreed to perform the needed labor or services on the terms and conditions of a job offer approved by the Secretary of Labor.

The petition or the application for certification may be filed by an association representing agricultural producers. It is the Committee's intent that the H–2 program be both expeditious and fair. In order to improve efficiency, therefore, associations comprised of bona fide agri-

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cultural employers may file single petitions for needed foreign workers. Nevertheless, in order to maintain the fairness of the program, individual employers must remain liable for representations made in obtaining foreign workers. The association is liable only if the association, rather than the individual employers, is the sole employer of all foregn agricultural workers.

The Secretary of Labor is required to establish an expedited procedure for review of denials of labor certification, or, at the applicant's request, a de novo administrative hearing. Furthermore, the Secretary of Labor must expeditiously make a *new* determination on the request for certification where an employer has filed a timely application and the application was denied because the employer was referred "qualified eligible individuals," but at the time the workers were required, the workers were not actually available and qualified. The employer has the burden of establishing that workers referred were not actually qualified because of employment-related reasons.

The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, is required to report annually to the Congress on the certification process, including the impact of temporary alien workers on labor conditions in the United States and on compliance with the conditions of the program.

This section authorizes the appropriation of $10,000,000 each fiscal year (beginning with fiscal year 1983) to recruit domestic workers for jobs which temporary alien workers might otherwise perform and to monitor conditions of employment of nonimmigrant workers and of U.S. workers employed by the same employers. It authorizes the Secretary of Labor to take such actions as may be necessary to assure employers compliance with the conditions of employment of such workers.

*Section 211(c)* makes these changes effective for petitions and applications filed on or after the first day of the sixth month beginning after enactment.

*Section 211(d)* requires the Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, to approve all regulations implementing the amendments of this section before they are issued. It is the Committee's intent that the Secretary of Labor will continue to issue all regulations relating to labor certification. Nevertheless, the Committee believes that the Department of Agriculture should have a meaningful role in formulating regulations of the H–2 (a) program, which deal with the particular needs of agriculture. As the final nonjudicial authority on the proper interpretation of the immigration laws, the Attorney General should approve, after consultation with both the Department of Labor and the Department of Agriculture, regulations governing the admissibility of agricultural H–2 workers under this section.

*Section 212—Students*

*Section 212(a)* amends the provisions of section 212(e) of the INA to require that foreign students, whether academic or vocational, return to their country for at least two years after attending school in the United States, before they may obtain permanent residence status or one of the work-related nonimmigrant statuses under section 101(a)

15 (H) or (L). As with foreign medical graduates, this requirement cannot be waived by the government of the country of nationality, but may be waived by the Attorney General in order to avoid "exceptional hardship" to the U.S. citizen or permanent resident spouse or child of such alien, or if the alien would be subject to persecution on account of race, religion, or political opinion. *Section 212 (c) (1)* provides that this requirement only applies to aliens who obtain student status after enactment.

*Section 212(b)* amends section 245(c) of the INA to prohibit students (other than immediate relatives of United States citizens) and visitors entering the United States under the visa waiver pilot program from adjusting in the United States their status to permanent resident. They must apply for an immigrant visa and receive it abroad. *Section 212(c)(2)* provides that this provision applies to students currently in the United States as well as those who may enter in the future.

*Section 213—Visa waiver for certain visitors*

*Section 213(a)* amends section 212 of the INA to authorize the Attorney General and the Secretary of State to jointly establish a pilot program for three years for the admission of foreign tourists and business visitors without a visa. This program would only permit the entry of an alien for 90 days, and would only apply to an alien who is a national of one of the 5 countries selected by the Secretary of State and the Attorney General from among those who extend or agree to extend reciprocal privileges to U.S. citizens. The program requires completion of a new immigration form and waiver of certain review and appeal rights before entry, and requires the alien to have a round-trip, nonrefundable, nontransferable, open-dated transportation ticket issued by a qualified carrier. It does not apply to any alien who has been determined to represent a threat to the welfare, safety, or security of the United States, and would not apply to any alien who previously failed to comply with the conditions of any previous admission as a nonimmigrant. All such aliens would still be subject to the exclusion provisions of INA section 212(a).

The program may not be put into operation until 30 days after the Attorney General has certified to Congress that an automated control system, developed and established in cooperation with the Secretary of State, to screen and monitor arrival and departure of foreign visitors into the United States is operational and that a form has been developed which summarizes the grounds of exclusion, describes the terms and conditions of entry under the visa waiver program and the consequences of failure to comply, and includes questions concerning any previous entries or any denial of a visa application.

A country cannot qualify initially unless in the prior fiscal year the number of visitor visa refusals and exclusions of visitors constituted less than 2% of the total number of visitor visas issued or denied to nationals of that country. In subsequent periods, new countries must meet this test and countries previously designated must not have had in the prior fiscal year a total of visitor exclusions and overstays exceeding 2% of the total number of nationals of that country applying for admission to the United States.

The nonrefundable, roundtrip ticket must be issued by a carrier which has agreed to indemnify the United States against costs of transporting from the United States visitors who are refused admission or who unlawfully overstay, to notify the Attorney General when visitors have failed to depart within the required 90-day period, and to submit on a daily basis any immigration forms collected. The Attorney General can terminate these agreements with 5 days notice for a carrier's failure to meet the terms of the agreement.

The pilot program begins on the date 30 days after the Attorney General has certified to Congress that the monitoring system and forms are in place to begin the program and terminates with the end of the third fiscal year beginning after that date.

*Section 213(b)* amends section 214(a) of the INA to prohibit extension of period of stay for visa waiver visitors.

*Section 213(c)* notes that under a previous provision (Section 212 (b)) visa waiver visitors are prohibited from adjusting to permanent resident status.

*Section 213(d)* prohibits visa waiver visitors from adjusting to another nonimmigrant status.

## Title III—Legalization

*Section 301—Legalization*

*Section 301(a)* adds a new section 245A to the INA. providing for adjustment of status of certain aliens who eintered the U.S. before January 1, 1982.

Under subsection (a) of the new section 245(A), the Attorney General is given discretionary authority to adjust the status of certain aliens to that of aliens lawfully admitted for permanent residence if they apply within one year of enactment and establish that they entered the United States before January 1, 1978, have resided continuously in the U.S. in an unlawful status since that date, and are otherwise admissible as an immigrant. If the alien entered legally as a nonimmigrant, any authorized period of stay must have expired before January 1, 1978. If the alien had been an exchange visitor, the two-year foreign residency requirement must have been satisfied or waived.

Under subsection (b) of the new section, the Attorney General is given discretionary authority to adjust the status of certain other aliens to a new legal status, that of aliens lawfully admitted for *temporary* residence, if they apply within one year of enactment and establish that they either (i) entered the United States before January 1, 1982 and have resided continuously in the U.S. in an unlawful status since that date, or (ii) as of the date of enactment have the status of a Cuban/Haitian entrant (status pending), have resided continuously in the U.S. since that status was granted, and are otherwise admissible as an immigrant. If the alien entered legally as a nonimmigrant. any authorized period of stay must have expired before January 1, 1982. If the alien had been an exchange visitor, the two-year foreign residency requirement must have been satisfied or waived. During their period of temporary lawful residence, these aliens may make brief and casual trips abroad. for example. to visit relatives and friends and they are granted authority to work in the United States.

No alien who has been convicted of any felony or three or more misdemeanors in the U.S. or has assisted in persecuting any persons on account of race, religion, nationality, membership in a particular social group, or political opinion, could qualify for either kind of legalization.

The Committee intends that for purposes only of the new INA section 245A(a)(2) and (b)(1) the phrase "entered the United States" be interpreted in its nontechnical sense, in other words as equivalent to the phrase "physically came into the United States."

Except in the case of Cuban/Haitian entrants, aliens in temporary resident status will not be eligible for programs of Federal financial assistance granted on the basis of financial need, other than assistance required because of old age, blindness, or disability, or health care required in the interest of public health or because of serious illness or injury. In providing for such exceptional cases requiring assistance for aliens granted temporary resident status, the Committee does not intend automatic eligibility for such programs as Medicaid and Supplemental Security Income (SSI). Rather, it is the Committee's intent that the Attorney General, in consultation with the Secretary of Health and Human Services, develop regulations to define "assistance required because of old age, blindness, or disability" and "health care required in the interest of public health or because of serious illness or injury" and to designate the most cost-effective approach for extending Federal fiscal responsibility in limited circumstances and for a limited period of time. State or local governments are authorized to provide that aliens in temporary resident status are ineligible for state or local assistance programs, with the same exceptions. Adjustments of status under this section will not affect the provision of assistance under the Cuban/Haitian assistance program.

The Committee notes the concern expressed by state and local governments regarding the potential fiscal impact arising from participation in public assistance programs by the legalized population. This concern is related to the experience these governments have had with refugee populations, whose dependence on special Federal entitlement programs has reached 70% in the past year, thereby thwarting the primary intent of the Federal domestic assistance program, which is to encourage economic self-sufficiency among refugees.

In order to assure that the legalized population, in both temporary resident status and permanent resident status, remains economically self-sufficient and does not present a disproportionate fiscal burden, the Committee intends that each applicant for legalization, including all dependents, be carefully screened to meet the requirement of INA section 212(a)(15) that he not be likely to become a "public charge." Such screening should occur in connection with applications for temporary resident status, applications to adjust from temporary to permanent resident status, and direct applications for permanent resident status. The Committee further intends that waivers of the provisions of INA section 212(a)(15) will be granted only in unusual circumstances involving extreme hardship. Furthermore, the Committee wishes to state that although it is aware that the State Department and the Immigration and Naturalization Service have interpreted "public charge" to exclude persons receiving assistance through

such programs as "food stamps" and "rent subsidies," it does not concur with this interpretation of INA section 212(a)(15).

The Attorney General is given discretionary authority to adjust to permanent resident status those who have temporary resident status, if the alien applies within the 6-month period beginning 2 years after they have temporary resident status, has been continuously resident in the U.S. in temporary resident status during the 2-year period, is otherwise admissible as an immigrant, has not been convicted of a felony or three or more misdemeanors, and has satisfied an English competence requirement (to the extent applicable if such alien were naturalizing) or is satisfactorily pursuing a recognized course of study leading to a minimum English language competence.

The Attorney General may terminate temporary resident status if the alien commits acts making the alien inadmissible as an immigrant, or is convicted of any felony or at least three misdemeanors, or after 31 months if the alien has not filed for adjustment to permanent resident status.

Under subsection (c) of the new section, the Attorney General is required to work with voluntary agencies or other community and private organizations in processing applications for permanent or temporary resident status. Subsection (c) also waives the labor certification, lack of proper documentation, illiteracy, and foreign medical graduate grounds for exclusion and permits the Attorney General to waive additional grounds (except those related to criminal and most drug offenses, and security-related grounds) for humanitarian purposes, in order to assure family unity, or when otherwise in the national interest.

During the first 6 months after enactment, the Attorney General is required to widely disseminate in cooperation with qualified voluntary agencies and the Department of Labor, information on the legalization program authorized under this section.

Subsection (d) of the new section authorizes the appropriation of $10,000,000 for fiscal year 1983 for the purpose of making arrangements with qualified voluntary agencies and disseminating information on the program.

*Section 301(b)* provides a conforming change to the table of contents of the INA.

## Title IV—Reports to Congress

*Section 401—Reports to Congress*

*Section 401* requires the President ot submit a number of reports to the Judiciary Committees of the Senate and House. S. 2222 makes major changes in immigration law. All the impacts of such changes cannot be known in advance with certainty. Consequently, the Committee believes that the President should be directed to prepare and submit such reports on the impact of several important provisions of the bill. This is not intended to imply that Executive Branch agencies should not study and report on other provisions. The required reports include:

(a) Reports on the implementation of the bill's prohibition of the knowing employment, recruitment, or referral of illegal aliens, including an analysis of the transitional verification system and progress toward a more secure system, and an analysis of the impact of the program on the labor market, the number of illegal aliens, discrimination

against members of minority groups, and the paperwork burden on U.S. employers.

(b) A report on legal immigration, including the number of aliens admitted in the 3½ years after enactment as immediate relatives and other categories of permanent residents, refugees, asylees, parolees, and the impact of sluch aliens on the labor market. This report is due no later than 4 years after enactment.

(c) A report on the implementation of amendments to the H–2 program, including the impact on U.S. agricultural employers and workers, the development of regulations, and recommendations for modification of the program. This report is due no later than 2 years after enactment. The Committee is interested specifically in whether the amended H–2 program has effectively met legitimate temporary labor shortages which may arise in agriculture without deleterious effect on the wages and working conditions of American agricultural workers.

There were various important issues raised during the hearings and consultations on the H–2 program which the Committee believes should be addressed in the formulation of regulations. These include the issue of whether there is sufficient flexibility in provisions for housing, an issue which becomes especially important as the H–2 program is extended to meet the specific needs of agriculture in the Western part of the country. Harvest periods there sometimes last only a few weeks. It is also necessary to evaluate current regulations exempting employers from paying social security and unemployment insurance for their H–2 workers and whether such an exemption constitutes a "payroll tax wedge," which favors the hiring of foreign over U.S. workers.

This report should also include recommendations to further address the Committee's intent that this program help meet temporary labor shortages, as part of an overall immigration reform package. The Committee views any expansion of the H–2 program as transitional in nature and asks for recommendations that will preclude the long-term dependence of any U.S. industry on a constant supply of foreign labor.

(d) A report on the pilot visa waiver program, including the impact on control of alien visitors to the U.S., consular operations in the countries selected for the program, and on the U.S. tourist industry, and including recommendations about extension and expansion of the program. This report is due no later than 2 years after the beginning of the program.

(e) A report on the legalized population, including geographic origins and manner of entry into the U.S., demographic characteristics, patterns of employment, participation in social service programs, and a generalized profile and description of the population. This report is due no later than 2 years after enactment.

## VI. COST ESTIMATE

In accordance with Section 252(a) of the Legislative Reorganization Act (2 U.S.C. 190(j)), the Committee estimates that there will be added costs due to this act and adopts the cost estimate prepared by the Congressional Budget Office (CBO), set forth below.

On June 10, 1982 the following opinion was received from CBO:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, D.C., June 10, 1982.*

Hon. STROM THURMOND,
*Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2222, the Immigration Reform and Control Act of 1982.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
*Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, JUNE 10, 1982

1. Bill number: S. 2222.

2 Bill title: Immigration Reform and Control Act of 1982.

3. Bill status: As ordered reported by the Senate Committee on the Judiciary, May 27, 1982.

4. Bill purpose: S. 2222 revises the Immigration and Nationality Act in numerous ways. Title I focuses on the control of illegal immigration. Part A establishes new guidelines for the employment of immigrants, directs the President to develop within three days of the date of enactment a secure system to determine the employment eligibility of all job applicants and sets forth penalties for violations. This section also directs the Attorney General, the Administrator of the Small Business Administration, and the Secretaries of Commerce, Labor, and Agriculture to disseminate forms and information to employers, employment agencies, and other organizations and the President to monitor the implementation and impact of this section on employment and illegal entry. A total of $20 million is authorized for these two activities for fiscal year 1983. Part A also makes certain changes to the Farm Labor Contractor Registration Act of 1963 and to the provisions of the Immigration and Nationality Act relating to fraud and misuse of certain documents. Part B makes it unlawful to transport any unauthorized alien into the country and establishes penalties for violations. In addition, this part directs the Attorney General to develop a fee structure to be applied to aliens using U.S. border facilities and services to provide funds substantially equal to those necessary to operate and maintain those facilities and services. Part C of the bill establishes new procedures and guidelines for adjudication and asylum. It sets up the U.S. Immigration Board and an immigration judge system, provides for judicial review of certain decisions, establishes new procedures for an alien's gaining asylum in the United States, and provides for a transition period from the current system. The bill includes an authorization of $20 million for this part. Part D of Title I provides a limitation on the adjustment of nonimmigrants to immigrant status by visa abusers.

Title II addresses the reform of legal immigration. Part A establishes new formulae for numerical limitations and creates preference and nonpreference allocation systems for immigration. This part also revises those sections of Title 8 of the U.S. Code that address labor certification and G–4 Special Immigrants. Part B of this title amends those provisions of the Immigration Act relating to farm workers and temporary employees (H–2 workers), directs the Secretary of Labor to make annual reports to the Congress on the impact of this section, and provides a permanent authorization of $10 million for recruiting domestic workers for temporary labor and services and for monitoring the terms and conditions under which such nonimmigrants are employed. This section also authorizes the Secretary of Labor to take such actions as are necessary to ensure employer compliance. Additionally, this part of S. 2222 establishes a pilot program of visa waivers for certain visitors, applying to five countries and operating for approximately three years.

Title III of the bill relates to the legalization of unauthorized aliens already in the country. This section empowers the Attorney General to adjust, at his discretion, the status of unauthorized aliens to that of lawfully admitted aliens eligible for permanent residence if they apply, meet certain conditions, and can establish that they illegally entered the United States prior to January 1, 1978, and have been residing continuously here illegally since then. Those unauthorized aliens having illegally entered the United States prior to January 1, 1982, including certain Cuban and Haitian entrants, may have their status adjusted to being lawfully admitted for temporary residence. This section also limits the benefits these individuals are eligible for, empowers the Attorney General to adjust the status of immigrants lawfully admitted for temporary residence to permanent residence under certain conditions, requires the Attorney General to disseminate information on available benefits and application requirements, and authorizes $10 million for fiscal year 1983 to carry out that requirement.

Title IV requires the President to submit to the Committees on the Judiciary of the House and the Senate five reports within certain time limits.

5. Cost estimate:

[By fiscal years, in millions of dollars]

| | 1983 | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|---|
| Direct spending provision: | | | | | |
| Required budget authority: | | | | | |
| Function 550 | | 10 | 35 | 55 | 65 |
| Function 600 | −2 | 10 | 55 | 95 | 115 |
| Estimated outlays: | | | | | |
| Function 550 | | 10 | 50 | 80 | 95 |
| Function 600 | 50 | 200 | 250 | 325 | 350 |
| Amounts subject to appropriation action (Function 750): | | | | | |
| Estimated authorization level | 60 | 10 | 10 | 10 | 10 |
| Estimated outlays | 38 | 23 | 12 | 11 | 11 |
| Estimated authorization level | 95 | 95 | 100 | 730 | 425 |
| Estimated outlays | 90 | 92 | 100 | 665 | 455 |
| Offsetting receipts: | | | | | |
| Budget authority | −60 | −64 | −68 | −72 | −76 |
| Outlays | −60 | −64 | −68 | −72 | −76 |
| Total: | | | | | |
| Estimated authorization level required budget authority | 93 | 61 | 132 | 818 | 539 |
| Estimated outlays | 118 | 261 | 344 | 1,009 | 835 |

6. Basis of estimate: For the purpose of this estimate, CBO assumes an enactment date of July 1, 1982, and that the full amounts authorized and those amounts estimated to be required to be authorized will be appropriated. This bill would also result in additional future federal liabilities through an extension of an existing entitlement and would require subsequent appropriation action to provide the necessary budget authority.

According to information available from the Social Security Administration and the Department of Labor, estimates of the costs of the secure identification system vary widely, depending on the particular system selected. Both systems would provide employers with a secure, effective, and immediate means of verifying the eligibility of all job applicants and would provide the federal government with a method of enforcing employer sanctions. CBO assumes, for the purpose of this estimate, that the Administration would take three years to select its identification system. The system envisioned by the Department of Labor's Employment and Training Administration would be based in the 2600 U.S. Employment Service field offices and would have a nonrecurring implementation cost of over $100 million (1982 dollars) and operational costs of approximately $700 million in fiscal year 1986 and $450 million in fiscal year 1987. The estimated costs of the Social Security Administration's proposed system start at over $400 million in fiscal year 1986 and decline to approximately $170 million in fiscal year 1987. For the purpose of the cost estimate table, the midpoint of both estimates in each year is used.

Information available from the Immigration and Naturalization Service (INS) suggests that enforcing the employer sanctions' provisions of the bill will require an additional 550 workyears and would cost approximately $20 million in fiscal year 1983, increasing to over $25 million in fiscal year 1987. This will allow INS to investigate 10,000 employer worksites annually, to detain over 16,000 individuals, and to handle any additional workload generated by worksite investigations and apprehensions. In addition, it is assumed that the Department of Labor will assist in enforcing employer sanctions, and the Department will require an additional 100 workyears of resources, requiring another $4 million in authorizations in fiscal year 1983, increasing to approximately $5 million in fiscal year 1987.

INS also anticipates that approximately $70 million in additional authorizations will be required in fiscal year 1983 in association with the investigation sections of the bill. That authorization will fund INS on-site supervision, records and information, field office investigations, data support, alien documentation, and other necessary overhead expenditures. Information available from the INS suggests that that same level of estimated required authorizations will not be necessary in succeeding fiscal years. Accordingly, CBO estimates that an additional $50 million in authorizations will be necessary in fiscal year 1984, increasing to $59 million in fiscal year 1987. Estimated outlays associated with these authorization levels are $65 million in fiscal year 1983, decreasing to approximately $50 million in fiscal year 1987.

Estimated outlays associated with the provisions of Part A requiring the government to disseminate information to employers and to study the impact of this section on employment and illegal entry are

estimated to be $13 million in fiscal year 1983 and $7 million in fiscal year 1984.

Part B of Title I, establishing fees to offset the costs of operating and maintaining border facilities and services, is estimated to produce approximately $60 million in offsetting receipts in fiscal year 1983, increasing to approximately $80 million in fiscal year 1987. This estimate assumes that approximately 170 million aliens will cross American borders in each of the five fiscal years and that each individual will be required to pay a fee of $0.35 (1982 dollars). Because the amount actually received by the federal government in fines for criminal violations relative to the fine levied varies widely and because of a lack of data, CBO has no basis for estimating the receipts attributable to fines levied on individuals found guilty of illegally transporting aliens into the country.

The Part C adjudication authorization is expected to go for salaries and expenses of the U.S. Immigration Board and for the establishment of the investigation judge system. Based on available information, CBO anticipates that the same level of authorizations will be required in each of the succeeding fiscal years. Therefore, the required authorization level will approach $25 million in fiscal year 1987. Estimated outlays associated with these authorizations start at $18 million in fiscal year 1983, increasing to $25 million in fiscal year 1987.

In Title II, estimated outlays associated with the recruitment of domestic workers and the monitoring of the H–2 worker program are expected to be approximately $5 million in fiscal year 1983 and $10 million thereafter.

Finally, for reports on the visa worker program required in Title IV, CBO estimates that approximately $1 million in State Department resources will be absorbed in both fiscal year 1983 and 1984. No additional authorizations are assumed to be required.

The legalization of unauthorized aliens, provided for in Title III, would entitle aliens granted permanent resident status to receive benefits under a number of federal assistance programs. Such programs as Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid, and Food Stamps now require recipients to be citizens or permanent residents. In addition, in other programs, such as Disability Insurance (DI), many legalized aliens who would not have collected benefits, would now be exected to do so. Added program outlays as a result of legalizing unauthorized aliens are estimated to be $50 million in fiscal year 1983 and $445 million in 1987.

This estimate is very uncertain. Very little is known about either the numbers of unauthorized aliens in the United States or their characteristics. It is geenrally accepted that there are 3 to 6 million such aliens in the United States. For our estimate, we have used the midpoint of the range: 4½ million. Many of these aliens would not be eligible for permanent or temporary residency because they do not meet the requirements of S. 2222 or of the Immigration and Nationality Act. Still others would not apply for legalization. In our estimates, it was assumed that 950,000 would be granted permanent resident status immediately and 550,000 temporary resident status.

At the time these aliens are granted resident status, they must show that they have not been nor are they likely to be "public charges".

Hence, at the time they become residents, they are presumably working. However, over time this group of aliens could be expected to resemble the United States population as to recipiency of income support programs. By 1986, we have assumed that their recipiency rate for AFDC, SSI, Food Stamps, DI, Unemployment Insurance, and Medicaid resembles that of the United States population for similar age and sex groupings, leading to the outlays noted above. The estimate includes no cost for the provision of emergency medical assistance and cash assistance to the aged and disabled who are temporary residents because the nature of such assistance would be specified in the future by regulation.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Steve Martin, Hinda Ripps Chaikind, Janice Peskin, Roger Hitchner, Stephen Chaikind, and Richard Hendrix.

10. Estimate approved by:

JAMES L. BLUM,
*Assistant Director for Budget Analysis.*

## VII. REGULATORY IMPACT EVALUATION

In compliance with subsection (b) of paragraph 11 of Rule XXVI of the Standing Rules of the Senate, it is hereby stated that the only significant regulatory impacts will result from the enactment of S. 2222 arise from certain requirements of Sec. 101(a) of the bill, namely certain mandatory procedures for the verification of employment eligibility and record-keeping in connection therewith. The impact of these requirements is discussed in the first section of Part D of the General Statement, and in the portion of the Section-by-Section Analysis which describes Sec. 101(a) of the bill. Any further discussion of such impacts would be impracticable and, therefore, is omitted in accordance with clause (2) of such subsection (b), since details of the required forms and procedures will be developed only after enactment, by regulations of the Department of Justice and other Executive agencies.

## VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws proposed to be made by the bill are shown as follows: Existing law to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman.

IMMIGRATION AND NATIONALITY ACT

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*Sec. 281. Nonimmigrant visa fees and border facility fees.*

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# TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) * * *

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) * * *

* * * * * * *

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency; or (ii) who is coming temporarily to the United States [to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country] *(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations, of a temporary or seasonal nature, or (b) to perform other temporary services or labor* but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of members of the medical profession; or (iii) who is coming tem-

porarily to the United States as a trainee, other than to receive graduate medical education or training; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

* * * * * * *

(L) an alien who, immediately preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him; [or]

(M) (i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him[.] ; or

*(N) (i) the parent of an alien accorded the status of special immigrant under paragraph (27) (I) (i), but only if and while the alien is a child, or*

*(ii) a child of such parent or of an alien accorded the status of a special immigrant under paragraph (27) (I) (ii), (iii), or (iv).*

* * * * * * *

(27) The term "special immigrant" means—

(A) * * *

* * * * * * *

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977, who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment; [or]

(H) an immigrant, and his accompanying spouse and children, who—

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry[.] *; or*

*(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for admission under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and eighteen years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later;*

*(ii) an immigrant who is the surviving spouse of a deceased officer or employee of any such an international organization, and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for admission under this subparagraph and for a period or periods aggregating at least fifteen years prior to the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later;*

*(iii) an immigrant who is a retired officer or employee of such an international organization, and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States within seven years of the date of application for admission under this subparagraph and for a period or periods aggregating at least twenty years prior to the officer or employee's retirement from any such international organization, and (II) applies for admission under this subparagraph (i) on or before December 31, 1992 and (ii) no later than six months after the date of such retirement or six months after the date this subparagraph is enacted, whichever is later; or*

*(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family.*

* * * * * * *

*(43) The term "immigration judge" means such a judge appointed under section 107.*

(b) As used in titles I and II—
(1) * * *

* * * * * * *

[(4) The term "special inquiry officer" means any immigration officer who the Attorney General deems specially qualified to conduct specified classes of proceedings, in whole or in part, required by this Act to be conducted by or before a special inquiry officer and who is designated and selected by the Attorney General, individually or by regulation, to conduct such proceedings. Such special inquiry officer shall be subject to such supervision and shall perform such duties, not inconsistent with this Act, as the Attorney General shall prescribe.]

[(5)] (4) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

JUDICIAL REVIEW OF ORDERS OF DEPORTATION [AND EXCLUSION], *EXCLUSION, AND ASYLUM*

SEC. 106. (a) The procedure prescribed by, and all the provisions of the Act of December 29, 1950, as amended [16] (64 Stat. 1129; 68 Stat. 961; 5 U.S.C. 1031 et seq.), shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under section 242(b) of this Act or comparable provisions of any prior Act, except that—

(1) a petition for review may be filed not later than [six months] *45 days* from the date of the final deportation order or from the effective date of this section, whichever is the later;

(2) the venue of any petition for review under this section shall be in the judicial circuit in which thhe administrative proceedings before [a special inquiry officer] *an immigration judge* were conducted in whole or in part, or in the judicial circuit wherein is the residence, as defined in this Act, of the petitioner, but not in more than one circuit;

(3) the action shall be brought against the Immigration and Naturalization Service, as respondent. Service of the petition to review shall be made upon the Attorney General of the United States and upon the official of the Immigration and Naturalization Service in charge of the Service district in which the office of the clerk of the court is located. The service of the petition for review upon such official of the Service shall stay the deportation of the alien pending determination of the petition by the court, unless the court otherwise directs;

[(4) except as provided in] (4)(A) *except as provided in subparagraph (B) and in* clause (B) of paragraph (5) of this subsection, the petition shall be determined solely upon the administrative record upon which the deportation order is based and the [Attorney General's findings of fact,], *findings of fact in the*

---

Footnote omitted.

*order* if supported by[reasonable, substantial, and probative] *substantial* evidence on the record considered as a whole, shall be conclusive;

(*B*) *the court shall not review the order to the extent that the order relates to an application for asylum;*

(5) whenever any petitioner, who seeks review of an order under this section, claims to be a national of the United States and makes a showing that his claim is not frivolous, the court shall (A) pass upon the issues presented when it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or (B) where a genuine issue of material fact as to the petitioner's nationality is presented, transfer the proceedings to a United States district court for the district where the petitioner has his residence for hearing de novo of the nationality claim and determination as if such proceedings were originally initiated in the district court under the provisions of section 2201 of title 28, United States Code. Any such petitioner shall not be entitled to have such issue determined under section 360(a) of this Act or otherwise;

(6) if the validity of a deportation order has not been judicially determined, its validity may be challenged in a criminal proceeding against the alien for violation of subsection (d) or (e) of section 242 of this Act only by separate motion for judicial review before trial. Such motion shall be determined by the court without a jury and before the trial of the general issue. Whenever a claim to United States nationality is made in such motion, and in the opinion of the court, a genuine issue of material fact as the alien's nationality is presented, the court shall accord him a hearing de novo on the nationality claim and determine that issue as if proceedings had been initiated under the provisions of section 2201 of title 28, United States Code. Any such alien shall not be entitled to have such issue determined under section 360(a) of this Act or otherwise. If no such hearing de novo as to nationality is conducted, the determination shall be made solely upon the administrative record upon which the deportation order is based and the [Attorney General's findings of fact,] , *findings of fact in the order* if supported by reasonable, substantial and probative evidence on the record considered as a whole, shall be conclusive. If the deportation order is held invalid, the court shall dismiss the indictment and the United States shall have the right to appeal to the court of appeals within thirty days. The procedure on such appeals shall be as provided in the Federal rules of criminal procedure. No petition for review under this section may be filed by any alien during the pendency of a criminal proceeding against such alien for violation of subsection (d) or (e) of section 242 of this Act;

(7) nothing in this section shall be construed to require the Attorney General to defer deportation of an alien after the issuance of a deportation order because of the right of judicial review of the order granted by this section, or to relieve any alien from compliance with subsections (d) and (e) of section 242 of this Act. Nothing contained in this section shall be construed to preclude the Attorney General from detaining or con-

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tinuing to detain an alien or from taking him into custody pursuant to subsection (c) of section 242 of this Act at any time after the issuance of a deportation order; *and*

(8) it shall not be necessary to print the record or any part thereof, or the briefs, and the court shall review the proceedings on a typewritten record and on typewritten briefs [; and].

[(9) any alien held in custody pursuant to an order of deportation may obtain judicial review thereof by habeas corpus proceedings.]

[(b) Notwithstanding the provisions of any other law, any alien against whom a final order of exclusion has been made heretofore or hereafter under the provisions of section 236 of this Act or comparable provisions of any prior Act may obtain judicial review of such order by habeas corpus proceedings and not otherwise.]

*(b)(1)(A) Notwithstanding any other provision of law (except as provided under subparagraph (B)), there shall be no judicial review of a final order of exclusion or a final order respecting an application for asylum.*

*(B) Where the Attorney General has reviewed and either reversed or modified a determination of the United States Immigration Board under section 107(b)(5)(B), judicial review of such determination shall be available in the same manner, and to the same extent, as a final order of deportation may be reviewed under subsection (a).*

*(2) Nothing in this section shall be construed as limiting the right of habeas corpus under the Constitution.*

*(3) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction to review determinations of immigration judges or of the United States Immigration Board respecting the reopening or reconsideration of exclusion or deportation proceedings or asylum determinations outside of such proceedings, the reopening of an application for asylum because of changed circumstances, the Attorney General's denial of a stay of execution of an exclusion or deportation order, or the exclusion of an alien from the United States under section 235(b)(1).*

(c) An order of [deportation or of exclusion] *an immigration judge* shall not be reviewed by any court if the alien has not exhausted the administrative remedies available to him as of right under the immigration laws and regulations or if he has departed from the United States after the issuance of the order. Every petition for review or for habeas corpus shall state whether the validity of the order has been upheld in any prior judicial proceeding, and, if so, the nature and date thereof, and the court in which such proceeding took place. No petition for review or for habeas corpus shall be entertained if the validity of the order has been previously determined in any civil or criminal proceeding, unless the petition presents grounds which the court finds could not have been presented in such prior proceeding, or the court finds that the remedy provided by such prior proceeding was inadequate or ineffective to test the validity of the order.

*UNITED STATES IMMIGRATION BOARD; USE OF IMMIGRATION JUDGES*

*SEC. 107. (a)(1) There is established in the Department of Justice a United States Immigration Board (hereinafter in this section re-*

*ferred to as the "Board") composed of a Chairman and eight other members appointed by the Attorney General in accordance with regulations respecting appointments in the competitive service.*

*(2) The term of office of the Chairman and all other members of the Board shall be six years except that—*

*(A) of the members first appointed under this subsection, three shall be appointed for a term of two years, three shall be appointed for a term of four years, and three shall be appointed for a term of six years,*

*(B) a member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term, and*

*(C) a member may serve after the expiration of his term until his successor has taken office.*

*(3) Members of the Board (other than the Chairman) are entitled to receive compensation at the rate now or hereafter provided for grade GS–17 of the General Schedule, under section 5332 of title 5, United States Code. The Chairman is entitled to receive compensation at the rate now or hereafter provided for grade GS–18 of the General Schedule, under section 5332 of title 5, United States Code.*

*(4) The Chairman shall be responsible on behalf of the Board for the administrative operations of the Board and shall promulgate rules of practice and procedure for the Board and immigration judges.*

*(b)(1) The Board shall hear and determine appeals from—*

*(A) final decisions of immigration judges under this Act, other than a determination granting voluntary departure under section 244(e) within a period of at least thirty days if the sole ground of appeal is that a greater period of departure time should have been fixed;*

*(B) decisions on applications for the exercise of the discretionary authority contained in section 212(c) or section 212(d)(3)(B);*

*(C) decisions involving the imposition of administrative fines and penalties, including mitigation thereof;*

*(D)(i) decisions on petitions filed in accordance with section 204, other than petitions to accord preference status under paragraph (1) or (2) of section 203(b) or petitions on behalf of a child described in section 101(b)(1)(F), and (ii) decisions on requests for revalidation and decisions revoking approval of such petitions under section 205; and*

*(E) determinations relating to bond, parole, or detention of an alien under sections 242(a) and 242(c).*

*(2) Three members of the Board constitute a quorum of the Board, except that the Chairman (or any member of the Board designated by the Chairman) is empowered to decide nondispositive motions.*

*(3) The Board shall act in panels of three or more members (as designated by the Chairman in accordance with the rules of the Board). A final decision of such a panel shall be considered to be a final decision of the Board.*

*(4) The Board shall review the decision of an immigration judge based solely upon the administrative record upon which the decision is based and the findings of fact in the judge's order, if supported by*

*substantial evidence on the record considered as a whole, shall be conclusive.*

*(5)(A) A final decision of the Board shall be binding on all immigration judges, immigration officers, and consular officers under this Act unless and until otherwise modified or reversed by the Attorney General under subparagraph (B) or by a court of the United States.*

*(B) If the Attorney General determines that it is necessary for the national interest of the United States, the Attorney General may, within thirty days after the date of a final decision of the Board on a case, provide that the case be certified to him for his review, and the Attorney General shall render a decision on the case within thirty days. The determination of the Attorney General on such case shall be considered for other purposes of this Act to be the final decision of the Board on that case. If the Attorney General shall not have rendered a decision within thirty days, the final decision of the Board shall be considered final and not subject to further review by the Attorney General.*

*(c)(1) The Attorney General shall, in accordance with procedures and regulations governing appointment and, except as provided in this paragraph, compensation in the competitive service—*

*(A) appoint immigration judges, except that not more than seventy judges may be appointed and hold office under this section at any time;*

*(B) set the rate of compensation for such judges at a rate not to exceed the rate now or hereafter prescribed for grade GS–16 of the General Schedule, under section 5332 of title 5, United States Code; and*

*(C) designate one such judge to serve as chief immigration judge, who shal be entitled to compensation at the rate now or hereafter prescribed for grade GS–17 of such General Schedule.*

*(2) In accordance with the rules established by the Board, the chief immigration judge—*

*(A) shall have responsibility for the administrative activities affecting immigration judges, and*

*(B) may designate any inmigration judge in active service to hear and decide any cases described in paragraph (3).*

*(3) Immigration judges shall hear and decide—*

*(A) exclusion cases under sections 236 and 360(c),*

*(B) deportation and suspension of deportation cases under sections 242, 243, and 244,*

*(C) rescission of adjustment of status cases under section 246,*

*(D) with respect to judges designated to hear such cases, applications for asylum under section 208, and*

*(E) such other cases as the Attorney General may provide by regulation.*

*An immigration judge may not hear or decide the case of an alien excluded from entry under section 235(b)(1).*

*(4) In considering and deciding cases coming before them, immigration judges may administer oaths and receive evidence, shall determine all applications for discretionary relief which may properly be raised in the proceedings, and shall exercise such discretion conferred upon the Attorney General by law as the Attorney General may specify for the just and equitable disposition of cases coming before such judges.*

# TITLE II—IMMIGRATION

## CHAPTER 1—SELECTION SYSTEM

### NUMERICAL LIMITATIONS

SEC. 201 [(a) Exclusive of special immigrants defined in section 101(a)(27), immediate relatives specified in subsection (b) of this section, and aliens who are admitted or granted asylum under section 207 or 208, the number of aliens born in any foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, shall not in any of the first three quarters of any fiscal year exceed a total of seventy-two thousand and shall not in any fiscal year exceed two hundred and seventy thousand: *Provided*, That to the extent that in a particular fiscal year the number of aliens who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitations of this section, together with the aliens who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the annual numerical limitation in effect pursuant to this section for such year, the Secretary of State shall reduce to such extent the annual numerical limitation in effect pursuant to this section for the following fiscal year.] *(a) Exclusive of special immigrants defined in section 101(a)(27), immigrants born to permanent resident aliens during a temporary visit abroad, immediate relatives specified in subsection (b) of this section, immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, aliens who are admitted or granted asylum under section 207 or 208, aliens provided records of permanent residence under section 214(d), and aliens whose status is adjusted to permanent resident status under section 245A, aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—*

*(1) family reunification immigrants described in section 203(a) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a), in a number not to exceed in any fiscal year the number equal to (A) three hundred and fifty thousand, minus (B) the sum of (i) the number of immediate relatives specified in subsection (b) of this section who in the previous fiscal year were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence, (ii) the number of immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, (iii) the number of immigrants born to permanent resident aliens during a temporary visit abroad, and (iv) the number of aliens who in the previous fiscal year were provided records of permanent residence under*

*section 214(d), plus (C) the difference (if any) between the maximum number of visas which may be issued under paragraph (2) during the prior fiscal year and the number of visas issued under that paragraph during that year, and not to exceed in any of the first three quarters of any fiscal year 27 per centum of the numerical limitation for all of such fiscal year, and*

*(2) independent immigrants described in section 203(b) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b), in a number not to exceed in any fiscal year the number equal to (A) seventy-five thousand, minus (B) the number of special immigrants (other than those described in section 101(a)(27)(A)) who in the previous fiscal year were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence, plus (C) the difference (if any) between the maximum number of visas which may be issued under paragraph (1) during the prior fiscal year and the number of visas issued under that paragraph during that year, and not to exceed in any of the first three quarters of any fiscal year 27 per centum of the numerical limitation for all of such fiscal year.*

* * * * * * *

NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE

SEC. 202. [(a) No person] *(a)(1) Except as specifically provided in paragraph (2) of this subsection and in section 101(a)(27), 201(b), 203, and 214(d), no person or place of residence,* [*except as specifically* provided in section 101(a)(27), section 201(b), and section 203: *Provided*, That the total number of immigrant visas made available to natives of any single foreign state under paragraphs (1) through (7) of section 203(a) shall not exceed 20,000 in any fiscal year: *And provided further*, That to the extent that in a particular fiscal year the number of such natives who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence and who are subject to the numerical limitation of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the numerical limitation in effect for such year pursuant to this section, the Secretary shall reduce to such extent the numerical limitation in effect for the natives of the same foreign state pursuant to this section for the following fiscal year.]

*(2)(A) Except as provided in subparagraph (B), the total number of natives of any single foreign state who are issued immigrant visas or may otherwise acquire the status of an alien lawfully admitted for permanent residence under subsections (a) and (b) of section 203 or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under subsection (a) or (b) of section 203 shall not exceed in any fiscal year—*

*(i) twenty thousand, in the case of any foreign state other than a foreign state contiguous to the United States, or*

*(ii) forty thousand (or the number determined under subparagraph (C)), in the case of any foreign state contiguous to the United States.*

*(B) If in a fiscal year the total number of immediate relatives specified in section 201(b), immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, aliens provided records of permanent residence under section 214(d), and special immigrants defined in section 101(a)(27) (other than those described in subparagraph (a) thereof) who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence who are natives of a particular foreign state exceeded twenty thousand, then the numerical limitation applicable to that state in the following fiscal year under subparagraph (A) shall be reduced by the amount of such excess.*

*(C) If in any fiscal year the number of aliens chargeable to a contiguous foreign state who are issued immigrant visas or otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence is less than forty thousand, then in the following fiscal year the number to be used in clause (ii) of subparagraph (A) for the other contiguous foreign state shall be forty thousand plus the amount of the difference.*

* * * * * * *

[(e) Whenever the maximum number of visas have been made available under section 202 to natives of any single foreign state as defined in subsection (b) of this section or any dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas, not to exceed 20,000, in the case of a foreign state or 600 in the case of a dependent area, shall be made available and allocated as follows:

[(1) Visas shall first be made available, in a number not to exceed 20 per centum of the number specified in this subsection, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

[(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons, or unmarried daughters of an alien lawfully admitted for permanent residence.

[(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by any employer in the United States.

[(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the

married sons or the married daughters of citizens of the United States.

[(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

[(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

[(7) Visas so allocated but not required for the classes specified in paragraphs (1) through (6) shall be made available to other qualified immigrants strictly in the chronological order in which they qualify.]

ALLOCATION OF IMMIGRANT VISAS

SEC. 203. [(a) Aliens who are subject to the numerical limitations specified in section 201(a) shall be allotted visas as follows:

[(1) Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section 201(a), to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

[(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully for permanent residence.

[(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

[(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

[(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

[(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), to qualified immigrants who are capable of performing specified skilled or un-

skilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

[(7) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State. No immigrant visa shall be issued to a nonpreference immigrant under this paragraph, or to an immigrant with a preference under paragraph (3) or (6) of this subsection, until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a United States citizen or lawful resident alien unless (A) a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by the State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States; and (B) the child has been irrevocably released for immigration and adoption: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

[(8) A spouse or child as defined in section 101(b)(1)(A), (B), (C), (D), or (E) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under paragraph (1) through (7), be entitled to the same status, and the same order of consideration provided in subsection (b), if accompanying, or following to join, his spouse or parent.]

*(a) PREFERENCE ALLOCATION FOR FAMILY REUNIFICATION IMMIGRANTS.—Aliens subject to the numerical limitation specified in section 201(a)(1) for family reunification immigrants shall be allotted visas as follows:*

*(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 15 per centum of such numerical limitation, plus any visas not required for the class specified in paragraph (4).*

*(2) SPOUSES AND CHILDREN OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are the spouses or children of an alien lawfully admitted for permanent residence or who (A) as of March 1, 1982, had received approval of a petition made on their behalf for preference status by reason of the relationship described in this paragraph as this paragraph was in effect on such date and (B) continue to qualify under the terms of the Act as in effect on such date shall be allocated visas in a number not to exceed 65 per centum of such numerical limitation, plus any visas not required for the class specified in paragraph (1).*

*(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 10 per centum of such numerical limitation, plus any visas not required for the classes specified in paragraphs (1) and (2).*

*(4) PREVIOUS FIFTH PREFERENCE.—Qualified immigrants who (A) as of March 1, 1982, had received approval of a petition made on their behalf for preference status by reason of the relationship described in paragraph (a)(5) as in effect on such date, and (B) continue to qualify under the terms of the Act as in effect on such date shall be allocated visas in a number not to exceed 10 per centum of such numerical limitation, plus any visas not required for the classes specified in paragraphs (1) through (3).*

*(b) PREFERENCE AND NONPREFERENCE ALLOCATION FOR INDEPENDENT IMMIGRANTS.—Aliens subject to the numerical limitation specified in section 201(a)(2) for independent immigrants shall be allocated visas as follows:*

*(1) ALIENS OF EXCEPTIONAL ABILITY.—Qualified immigrants who because of their exceptional ability in the sciences, arts, professions, or business will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States, shall be allocated visas in a number not to exceed such numerical limitation. The Attorney General may, when he deems it to be in the national interest waive the requirement of the previous sentence that an alien's services in the sciences, arts professions, or business be sought by an employer in the United States. In determining under this paragraph whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning, or of a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.*

*(2) SKILLED WORKERS.—Qualified immigrants who are capable of performing skilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States, shall be allocated any visas not required for the classes specified in paragraph (1).*

*(3) INVESTORS.—Qualified immigrants who have invested, or established to the Attorney General their intention to invest, substantial capital (in an amount set by the Attorney General and not less than $250,000 in an enterprise in the United States of which the alien will be a principal manager and which will benefit the United States economy and create full-time employment for not fewer than four eligible individuals (as defined in section 214(c)(3)(D)), other than the spouse or children of such immigrant, shall be allocated any visas not required for the classes specified in paragraphs (1) and (2), but in a number not to exceed 10 per centum of such numerical limitation.*

*(4) NONPREFERENCE ALIENS.—Visas authorized in any fiscal year under section 210(a)(2), less those required for issuance to the classes specified in paragraphs (1) through (3), shall be made available to other qualified immigrants in the chronological order in which they qualify. No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a United States citizen or lawfully resident alien unless (A) a valid home study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States, and (B) the child has been irrevocably released for immigration and adoption: Provided, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.*

*An immigrant visa shall not be issued to an immigrant under paragraph (1), (2), or (4) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). The provisions of section 212(d)(11) shall apply with respect to any alien petitioning to be classified as a preference immigrant under paragraph (1).*

*(c) GUIDE FOR ALLOCATION BETWEEN PREFERENCE SYSTEMS.—Where it is determined that the maximum number of visas will be made available under section 202(a)(2) to natives of any single state (defined in section 202(b)) or any dependent area (defined in section 202(c)) in any fiscal year, in determining whether to provide for visas to such natives under the preference system described in subsection (a) or that described in subsection (b), visa numbers with respect to natives of that state shall be allocated (to the extent practicable and otherwise consistent with this section) in a manner so that the ratio of—*

*(1) the sum of (A) the number of family reunification immigrants described in subsection (a), and (B) the number of immediate relatives specified in section 201(b), immigrants born to permanent residents during a temporary visit abroad, immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative or under section 203(a), and aliens provided records of permanent residence under section 214(d), who are natives of such state and who are issued immigrant visas or otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence in that fiscal year, to*

*(2) the sum of (A) the number of independent immigrants described in subsection (b), and (B) the number of special immigrants defined in section 101(a)(27) (other than those described in subparagraph (A) thereof) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b), who are natives of such state and who are issued immigrant visas or otherwise acquire the status of aliens lawfully admitted to the United*

*States for permanent residence in that fiscal year, is equal to 4.65 to 1.*

*(d) (1) A spouse or child as defined in subparagraph (A), (B), (C), (D) or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a) or (b), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, his spouse or parent.*

*(2) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.*

**[**(b)**]** *(e)* In considering applications for immigrant visas under subsection (a) *(or under subsection b)* consideration shall be given to applicants in the order in which the classes of which they are members are listed in **[**subsection (a).**]** *the respective subsection.*

**[**(c)**]** *(f)* Immigrant visas issued pursuant to **[**paragraphs (1) through (6) of subsection (a) *subsection (a) or pursuant to paragraphs (1) through (3) of subsection (b)* shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 204.

**[**(d)**]***(g)* Every immigrant shall be presumed to be a nonpreference immigrant until he establishes to the satisfaction of the consular officer and the immigration officer that he is entitled to a preference status under **[**paragraphs (1) through (6) of subsection (a)**]** *subsection (a) or paragraphs (1) through (4) of subsection (b)*, or to a special immigrant status under section 101(a)(27), or that he is an immediate relative of a United States citizen as specified in section 201(b). In the case of any alien claiming in his application for an immigrant visa to be an immediate relative of a United States citizen as specified in section 201(b) or to be entitled to preference immigrant status under **[**paragraphs (1) through (6) of subsection (a)**]** *subsection (a) or paragraphs (1) through (4) of subsection (b)*, the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

**[**(e)**]***(h)* For the purposes of carrying out his responsibilities in the orderly administration of this section, the Secretary of State is authorized to make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories of subsection (a), and to rely upon such estimates in authorizing the issuance of such visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within two years following notification of the availability of such visa that such failure to apply was due to circumstances beyond his control. Upon such termination the approval of any petition approved pursuant to section 204(b) shall be automatically revoked.

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. **[**8 U.S.C. 1154**]** (a) Any citizen of the United States claiming that an alien is entitled to a preference status by reason

of a relationship described in [paragraph (1), (4), or (5) of section 203(a)] *paragraph (1) or (3) of section 203(a)*, or to an immediate relative status under section 201(b), or any alien lawfully admitted for permanent residence claiming that an alien is entitled to a preference status by reason of the relationship described in [section 203(a)(2)] *paragraph (2) or (4) of section 203(a)* or any alien desiring to be classified as a preference immigrant under [section 203(a)(3)] *paragraph (1) or (3) or section 203(b)* (or any person on behalf of such an alien), or any person desiring and intending to employ within the United States an alien entitled to classification as a preference immigrant under [section 203(a)(6) *paragraph (2) or (4) of section 203(b)*, may file a petition with the Attorney General for such classification. The petition shall be in such form as the Attorney General may by regulations prescribe and shall contain such information and be supported by such documentary evidence as the Attorney General may require. The petition shall be made under oath administered by any individual having authority to administer oaths, if executed in the United States, but, if executed outside the United States, administered by a consular officer or an immigration officer.

(b) After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under [section 203(a)(3) or (6)] *paragraph (1) or (2) of section 203(b)*, the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for a preference status under section 203(a), approve the petition and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status.

(c) Notwithstanding the provisions of subsection (b) no petition shall be approved if the alien has previously been accorded a nonquota or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws.

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[(f) The provisions of this section shall be applicable to qualified immigrants specified in paragraphs (1) through (6) of section 202(e).]

* * * * * * *

ASYLUM PROCEDURE

SEC. 208. [(a) The Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A).] *(a)(1)(A) Except as provided in subparagraph (B), any alien physically present in the United States or at a land border or port of entry may apply for asylum in accordance with this section.*

*(B)(i) An alien against whom exclusion or deportation proceedings have been instituted may not file a notice of intention to apply for asylum more than fourteen days, nor perfect such application for asylum more than thirty-five days, after the date of the service of the notice instituting such proceedings unless the alien can make a clear showing, to the satisfaction of the immigration judge conducting the proceeding, that changed circumstances in the country of the alien's nationality (or, in the case of an alien having no nationality, the country of the alien's last habitual residence), between the date of notice instituting the proceeding and the date of application for asylum, have resulted in a change in the alien's eligibility for asylum.*

*(ii) An alien who has previously applied for asylum and had such application denied may not again apply for asylum unless the alien can make a clear showing that changed circumstances in the country of the alien's nationality (or, in the case of the alien having no nationality, the country of the alien's last habitual residence), between the date of the previous denial of asylum and the date of the subsequent application for asylum, have resulted in a change in the alien's eligibility for asylum.*

*(2) Applications for asylum shall be considered before immigration judges who are specially designated by the United States Immigration Board as having special training in international relations and international law. An individual who has served as a special inquiry officer under this title before the date of the enactment of the Immigration Reform and Control Act of 1982 may not be designated to hear applications under this section.*

*(3)(A) A hearing on the asylum application shall be open to the public, unless the applicant requests that it be closed to the public. To the extent practicable, the hearing shall be conducted in a nonadversarial, informal manner, except that the applicant is entitled to be assisted by counsel (in accordance with section 292), to present evidence, and to examine and cross-examine witnesses. A complete record of the proceedings and of all testimony and evidence produced at the hearing shall be kept. The determination of the immigration judge shall be based only on the evidence produced at the hearing.*

*(B)(i) The Secretary of State shall on a continuing basis make available to the Attorney General and to immigration judges who hear applications under the section information on human rights in all countries. The immigration judges shall use such information, if available without delay to the proceedings, as general guidelines in making the asylum determination.*

*(ii) The Attorney General shall provide notice to the Secretary of State whenever an application for asylum is filed under this section. The Secretary of State may submit comments to the immigration judge on such application, but the immigration judge shall not delay the proceeding in order to receive such comments.*

*(4) The Attorney General may, in his discretion, grant an alien asylum only if the immigration judge determines that the alien (A) is a refugee within the meaning of section 101(a)(42)(A), and (B) does not meet a condition described in one of the subparagraphs of section 243(h)(2).*

*(5) The burden of proof shall be upon the alien applying for asylum to establish the alien's eligibility for asylum.*

*(6) After making a determination on an application for asylum under this section, an immigration judge may not reopen the proceeding at the request of the applicant except upon a clear showing that, since the date of such determination, changed circumstances in the country of the alien's nationality (or, in the case of an alien having no nationality, the country of the alien's last habitual residence) have resulted in a change in the alien's eligibility for asylum.*

(b) Asylum granted under subsection (a) may be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that the alien *(1)* is no longer a refugee within the meaning of section 101(a)(42)(A) owing to a change in circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided, *or (2) meets a condition described in one of the subparagraphs of section 243(h)(2).*

(c) A spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E)) of an alien who is granted asylum under subsection (a) may, if not otherwise eligible for asylum under such subsection, be granted the same status as the alien if accompanying, or following to join, such alien.

*(d) The procedures set forth in this section shall be the sole and exclusive procedure for determining asylum.*

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CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

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GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(1) * * *

* * * * * * *

(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that [(A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section 203(a) (3) and (6), and to nonpreference immigrant aliens described in section 203(a)(7);] *(A) there are not sufficient qualified workers available in the United States in the occu-*

*pations in which the aliens will be employed; (B) sufficient workers in the United States could not within a reasonable period of time be trained for such occupations by (or through funds provided by) potential employers; and (C) the employment of aliens in such occupations will not adversely affect the wages and working conditions of workers in the United States who are similarly employed. In making such determinations the Secretary of Labor may use labor market information without reference to the specific job opportunity for which certification is requested. An alien on behalf of whom a certification is sought must have an offer of employment from an employer in the United States. The exclusion of aliens under this paragraph shall only apply to preference immigrants described in section 203(b) (1) and (2) and to nonpreference immigrants described in section 203(b)(4). Decisions of the Secretary of Labor made pursuant to this paragraph, including the issuance and content of regulations and the use of labor market information under this paragraph, shall be reviewable by an appropriate district court of the United States, but the court shall not set aside such a decision unless there is compelling evidence that the Secretary made such decision in an arbitrary and capricious manner;*

* * * * * * *

(d)(1) The provisions of paragraphs (11) and (25) of subsection (a) shall not be applicable to any alien who in good faith is seeking to enter the United States as a nonimmigrant.

* * * * * * *

*(11) The requirement in paragraph (14) of subsection (a) relating to an offer of employment from an employer in the United States may be waived with respect to any alien seeking to enter the United States as an immigrant under section 203(b)(1), if the Attorney General deems it to be in the national interest.*

(e) No person *(1)* admitted under section 101(a)(15)(J) or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Secretary of State pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, *or (2) admitted under section 101(a)(10) (F) or (M) or acquiring such status after admission*, shall be eligible to apply for an immigration visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: *Provided*, That upon the favorable recommendation of the Secretary of State, pursuant to the request of an interested United States Government agency, or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States

would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest: *And provided further*, That, except in the case of an alien described in clause [(iii)] *(1)(iii) or clause (2)*, the Attorney General may, upon the favorable recommendation of the Secretary of State, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Secretary of State a statement in writing that it has no objection to such waiver in the case of such alien.

* * * * * * *

*(l)(1) The Attorney General and the Secretary of State are authorized to establish a pilot program (hereinafter in this subsection referred to as the "program") under which the requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this subsection, in the case of an alien who—*

*(A) is applying for admission during the pilot program period (as defined in paragraph (5)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding ninety days;*

*(B) is a national of a country which—*

*(i) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and*

*(ii) is designated as a pilot country under paragraph (3);*

*(C) before such admission completes such immigration form as the Attorney General shall establish under paragraph (2)(C) and executes a waiver of review and appeal described in paragraph (2)(D);*

*(D) has a round trip, nonrefundable, nontransferable, open-dated transportation ticket which—*

*(i) is issued by a carrier which has entered into an agreement described in paragraph (4), and*

*(ii) guarantees transport of the alien out of the United States at the end of the alien's visit, and*

*(E) has been determined not to represent a threat to the welfare, safety, or security of the United States;*

*except that no such alien may be admitted without a visa pursuant to this subsection if the alien failed to comply with the conditions of any previous admission as a nonimmigrant.*

*(2)(A) The program may not be put into operation until the end of the thirty-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in subparagraph (B) is operational and that the form described in subparagraph (C) has been produced.*

*(B) The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and depar-*

*ture control system to screen and monitor the arrival into and departure from the United States of nonimmigrant visitors receiving a visa waiver under the program.*

*(C) The Attorney General shall develop a form for use under the program. Such form shall be consistent and compatible with the control system developed under subparagraph (B). Such form shall provide for, among other things—*

*(i) a summary description of the conditions for excluding nonimmigrant visitors from the United States under subsection (a) and this subsection,*

*(ii) a description of the conditions of entry with a waiver under this subparagraph, including the limitation of such entry to ninety days and the consequences of failure to abide by such conditions, and*

*(iii) questions for the alien to answer concerning any previous denial of the alien's application for a visa.*

*(D) An alien may not be provided a waiver under this subsection unless the alien has waived any right (i) to review or appeal under the Act of an immigration officer's determination as to the admissibility of the alien at the post of entry into the United States or (ii) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.*

*(3)(A) The Attorney General and the Secretary of State acting jointly may designate up to five countries as pilot countries for purposes of this subsection.*

*(B) For the period beginning after the thirty-day period described in paragraph (2)(A) and ending on the last day of the first fiscal year which begins after such thirty-day period, a country may not be designated as a pilot country unless the sum of—*

*(i) the total number of refusals during the fiscal year ending immediately before such thirty-day period of nonimmigrant visitor visas for nationals of that country, and*

*(ii) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such fiscal year as a nonimmigrant visitor.*

*was less than 2.0 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such fiscal year.*

*(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—*

*(i) in the case of a country which was a pilot country in the previous fiscal year, a conutry may not be designated as a pilot country unless the sum of—was less than 2.0 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such previous fiscal year.*

*(4) The agreement referred to in paragraph (1)(D)(i) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under this subsection—*

*(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the ninety-day period described in paragraph (1)(A)(i),*

*(B) to notify the Attorney General when the carrier has transported such a visitor to the United States and upon the expiration of the ninety-day period described in paragraph (1)(A)(i) if the visitor has not used the return portion of the ticket within such ninety-day period, and*

*(C) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under this subsection.*

*The Attorney General may terminate such an agreement with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.*

*(5) For purposes of this subsection, the term "pilot program period" means the period beginning at the end of the thirty-day period referred to in paragraph (2)(A) and ending on the last day of the third fiscal year which begins after such thirty-day period.*

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 248, such alien will depart from the United States. *An alien may not be admitted to the United States as a nonimmigrant under section 101(a)(15)(H)(ii)(a) for an aggregate period of more than eight months in any calendar year, except in the case of agricultural labor or services which the Secretary of Labor, before the date of the enactment of the Immigration Reform and Control Act of 1982, has recognized require a longer period, which may exceed one year. An alien who was admitted to the United States as a nonimmigrant under section 101(a)(15)(H)(ii) during the last five-year period may not be admitted under that provision if the alien violated the terms of any such previous admission. The Attorney General shall provide for such procedures for the entry and exit of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section. No alien admitted to the United States without a visa pursuant to section 212(l) may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.*

* * * * * * *

(c)(1) The question of importing any alien as a nonimmigrant under section 101(a)(15)(H) or (L) in any specific case or specific cases shall be determined by the Attorney General, after consultation

with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such informtaion as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant.

*(2)(A) A petition to import an alien as a nonimmigrant under section 101(a)(15)(H)(ii) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—*

*(i) there are not sufficient workers who are able, willing, qualified, and who will be available at the time and at the place needed to perform the labor or services involved in the petition, and*

*(ii) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States who are similarly employed,*

*and such certification has been issued. The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.*

*(B) The Secretary of Labor may not issue a certification under subparagraph (A) if—*

*(i) there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification; or*

*(ii) the employer, during the previous two years, employed nonimmigrant aliens admitted to the United States under section 101(a)(15)(H)(ii) and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer during that period substantially violated an essential term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers or has not paid a penalty (or penalties) for such violations which may be assessed by the Secretary of Labor: Provided further, That no employer may be denied certification for more than one year for any such violation.*

*(3)(A) In the case of an application for a labor certification under section 101(a)(15)(H)(ii)(a)—*

*(i) the Secretary of Labor may not require that such an application for labor certification be filed more than eighty days before the first date the employer requires the labor or services of the alien;*

*(ii) the Secretary of Labor shall make, not less than twenty days before the date such labor or services are first required to be performed, the certification described in paragraphs (2)(A) (i) and (ii) if an employer has complied with the criteria for certification, including the recruitment of eligible individuals as prescribed by the Secretary, and the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have agreed to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary and who are otherwise available: Provided, That the terms of such labor certification shall remain effective*

*only if the employer continues to accept for employment, until the date the aliens depart for work with the employer, qualified eligible individuals who apply to the employer or are referred to the employer; and*

*(iii) the petition, or the application for a certification, may be filed by an association representing agricultural producers who use agricultural labor or services. The filing of such a petition or application on a member's behalf does not relieve the member of and liability for representations made in such petition or application unless the association is the sole employer of all alien agricultural labor or services, in which case only the association shall be liable for representations made in such petition or application.*

*(B) The Secretary of Labor shall provide for an expedited procedure for the review of a denial of certification under paragraph (2) in the case of a nonimmigrant described in section 101(a)(15)(H)(ii)(a), or at the applicant's request, a de novo administrative hearing.*

*(C) The Secretary of Labor shall expeditiously make a new determination on the request for certification in the case of a nonimmigrant described in section 101(a)(15)(H)(ii)(a) if qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified eligible individuals. If the employer asserts that any eligible individuals who have been referred are not qualified, the burden of proof is on the employer to establish that the individuals referred are not qualified because of employment-related reasons.*

*(D) For purposes of this paragraph, the term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(a)(4)) with respect to that employment.*

*(4) The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, shall annually report to the Congress on the certifications provided under this subsection, the impact of aliens admitted pursuant to such certifications on labor conditions in the United States, and on compliance of employers and nonimmigrants with the terms and conditions of such nonimmigrants' admission to the United States.*

*(5) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1983, $10,000,000 for the purposes (A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 101(a)(15)(H)(ii), and (B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States. The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this subsection.*

(d) A visa shall not be issued under the provisions of section 101(a)(15)(K) until the consular officer has received a petition filed in the United States by the fiancée or fiancé of the applying alien and approved by the Atttorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have a bona fide intention to marry and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. In the event the marriage with the petitioner does not occur within three months after the entry of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be deported in accordance with sections 242 and 243. In the event the marriage between the said alien and the petitioner shall occur within three months after the entry and they are found otherwise admissible, the Attorney General shall record the lawful admission for permanent residence of the alien and minor children as of the date of the payment of the required visa fees.

*(e) The provisions of subsections (a) and (c) of this section preempt any state or local law regulating the admissibility of nonimmigrant workers.*

## Chapter 4—Provisions Relating to Entry and Exclusion

* * * * * * *

### PHYSICAL AND MENTAL EXAMINATION

Sec. 234. The physical and mental examination of arriving aliens (including alien crewmen) shall be made by medical officers of the United States Public Health Service, who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the [special inquiry officers,] *immigration judges*, any physical and mental defect or disease observed by such medical officers in any such alien. If medical officers of the United States Public Health Service are not available, civil surgeons of not less than four years' professional experience may be employed for such service upon such terms as may be prescribed by the Attorney General. Aliens (including alien crewmen) arriving at ports of the United States shall be examined by at least one such medical officer or civil surgeon under such administrative regulations as the Attorney General may prescribe, and under medical regulations prepared by the Surgeon General of the United States Public Health Service. Medical officers of the United States Public Health Service who have had special training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at such ports of entry as the Attorney General may designate, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens who it is suspected may be excludable under paragraphs (1), (2), (3), (4), or (5) of section 212(a), and the services of interpreters shall be provided for such examination. Any alien certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) may appeal to a board of medical officers of the United States Public Health Service, which shall be

convened by the Surgeon General of the United States Public Health Service, and any such alien may introduce before such board one expert medical witness at his own cost and expense.

INSPECTION BY IMMIGRATION OFFICERS

SEC. 235. (a) The inspection, other than the physical and mental examination, of aliens (including alien crewmen) seeking admission or readmission to, or the privilege of passing through the United States shall be conducted by immigration officers, except as otherwise provided in regard to [special inquiry officers] *immigration judges*. All aliens arriving at ports of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe. Immigration officers are hereby authorized and empowered to board and search any vessel, aircraft, railway car, or other conveyance, or vehicle in which they believe aliens are being brought into the United States. The Attorney General and any immigration officers[, including special inquiry officers,] *and any immigration judge* shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, pass through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and, where such action may be necessary, to make a written record of such evidence. Any person coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States, whether or not he intends to remain in the United States permanently and, if an alien, whether he intends to become a citizen thereof, and such other items of information as will aid the immigration officer in determining whether he is a national of the United States or an alien and, if the latter, whether he belongs to any of the excluded classes enumerated in section 212. The Attorney General and any immigration officer[, including special inquiry officers,] shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and [special inquiry officers] *and immigration judges* and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immgiration officer or [special inquiry officer] *immigration judge* may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or [special inquiry officer] *immigration judge* issue an order requiring such persons to appear before an immigration officer or [special inquiry officer] *immigration judge* produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

[(b) Every alien (other than an alien crewman), and except as otherwise provided in subsection (c) of this section and in section 273(d), who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer.]

*(b)(1) If an examining immigration officer at the port of arrival determines that an alien does not have the documentation required to obtain entry to the United States, does not have any reasonable basis for legal entry into the United States, and has not applied for asylum under section 208, such alien shall not be admissible and shall be excluded from entry into the United States without further inquiry or hearing.*

*(2) If an examining immigration officer at the port of arrival determines that an alien (other than an alien crewman and except as otherwise provided in subsection (c) of this section and in section 273(d)) is otherwise not clearly and beyond a doubt entitled to land, such alien shall be detained for a hearing on exclusion of alien to be held before an immigration judge.*

*(3)* The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before [a special inquiry officer for further inquiry.] *an immigration judge for an exclusion hearing.*

*(4) The Attorney General shall establish procedures, after consultation with the Judiciary Committees of the Congress, which assure that aliens are not excluded under paragraph (1) without an inquiry into their reasons for unlawfully seeking entry into the United States.*

*(5) In the case of an alien who would be excluded from entry under paragraph (1) but for an application for asylum under section 208, the exclusion hearing with respect to such entry shall be limited to the issues raised by the asylum application.*

(c) Any alien (including an alien crewman) who may appear to the examining immigration officer or to [the special inquiry officer during the examination before either of such officers] *during the examination or an immigration judge during an exclusion hearing* to be excludable under paragraph (27), (28), or (29) of section 212(a) shall be temporarily excluded, and no further [inquiry by a special inquiry officer] *examination or exclusion hearing* shall be conducted until after the case is reported to the Attorney General together with any such written statement and accompanying information, if any, as the alien or his representative may desire to submit in connection therewith and such an [inquiry or further inquiry] *examination or hearing* is directed by the Attorney General. If the Attorney General is satisfied that the alien is excludable under any of such paragraphs on the basis of information of a confidential nature, the disclosure of which the Attorney General, in the exercise of his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security, he may in his discretion order such alien to be excluded and deported without any [inquiry or further inquiry by a special inquiry officer.]

Nothing in this subsection shall be regarded as requiring an [inquiry before a special inquiry officer] *exclusion hearing before an immigration judge* in the case of an alien crewman.

EXCLUSIONS OF ALIENS

SEC. 236. (a) [A special inquiry officer] *An immigration judge* shall conduct proceedings under this section[, administer oaths, present and receive evidence, and interrogate, examine, and cross-examine the alien or witnesses]. He shall have authority in any case to determine whether an arriving alien who has been detained for [further inquiry] *an exclusion hearing* under section 235 shall be allowed to enter or shall be excluded and deported. The determination of such [special inquiry officer] shall be based only on the evidence produced at the [inquiry.] *hearing.* [No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions.] Proceedings before [a special inquiry officer] *an immigration law judge* under this section shall be conducted in accordance with this section, the applicable provisions of sections 235 and 287(b), and such [regulations as the Attorney General shall prescribe] *rules as the Chairman of the United States Immigration Board shall establish*, and shall be the sole and exclusive procedure for determining admissibility of a person to the United States under the provisions of this section. At such inquiry, which shall be kept separate and apart from the public, the alien may have one friend or relative present, under such conditions as may be prescribed by the Attorney General. A complete record of the proceedings and of all testimony and evidence produced at such [inquiry,] *hearing*, shall be kept.

(b) [From a decision of a special inquiry officer excluding an alien, such alien may take a timely appeal to the Attorney General] *Within 15 days after the date of a decision of an immigration judge excluding or admitting an alien, the alien or the immigration officer in charge at the port where the hearing is held, respectively, may file an appeal of the decision with the United States Immigration Board in accordance with rules established by the Chairman of the Board*, and any such alien shall be advised of his right to take such appeal. No appeal may be taken from a temporary exclusion under section 235(c). [From a decision of the special inquiry officer to admit an alien, the immigration officer in charge at the port where the inquiry is held may take a timely appeal to the Attorney General.] An appeal by the alien, or such officer in charge, shall operate to stay any final action with respect to any alien whose case is so appealed until the final decision of the [Attorney General] *United States Immigration Board* is made. Except as provided in section 235(c) such decision shall be rendered solely upon the evidence adduced before the [special inquiry officer] *immigration judge.*

(c) Except as provided in subsections (b) or (d), in every case where an alien is excluded from admission into the United States, under this Act or any other law or treaty now existing or hereafter made, the decision of [a special inquiry officer] *immigration judge* shall be final unless reversed on appeal [to the Attorney General].

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(d) If a medical officer or civil surgeon or board of medical officers has certified under section 234 that an alien is afflicted with a disease specified in section 212(a)(6), or with any mental disease, defect, or disability which would bring such alien within any of the classes excluded from admission to the United States under paragraphs (1), (2), (3), (4), or (5) of section 212(a), the decision of the [special inquiry officer] *immigration judge* shall be based solely upon such certification. No alien shall have a right to appeal from such an excluding decision of [a special inquiry officer.] *immigration judge.* If an alien is excluded by [a special inquiry officer] *an immigration judge* because of the existence of a physical disease, defect, or disability, other than one specified in section 212(a)(6), the alien may appeal from the excluding decision in accordance with subsection (b) of this section, and the provisions of section 213 may be invoked.

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## Chapter 5—Deportation; Adjustment of Status

### General classes of deportable aliens

Sec. 241. (a) Any alien in the Unnited States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) * * *

* * * * * * *

(9)(*A*) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status, or (*B*) *was admitted as an independent immigrant described in paragraph (3) of section 203(b) and by the end of the one year period following the date of entry failed to invest substantial capital in an enterprise in the United States as required in such paragraph or, having made such investment, has failed without good cause to maintain such an investment for a period of at least one year after the date of such entry or after the date such substantial investment was made, whichever date was later;*

* * * * * * *

### Apprehension and deportation of aliens

Sec. 242. (a) * * *

(b) [A special inquiry officer] *An immigration judge* shall conduct proceedings under this section to determine the deportability of any alien, and [shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses, and as authorized by the Attorney General,] shall make determinations, including orders of deportation. Determination of deportability in any case shall be made only upon a record made in a proceeding before [a special inquiry officer] *an immigration judge*, at which the alien shall have reasonable opportunity to be present, unless by reason of the alien's mental incompetency it is impracticable for him to be present, in which case the [Attorney General shall prescribe] *Chairman of the United States Immigration Board shall establish* necessary and proper safe-

guards for the rights and privileges of such alien. If any alien has been given a reasonable opportunity to be present at a proceeding under this section, and without reasonable cause fails or refuses to attend or remain in attendance at such proceeding, the [special inquiry officer] *immigration judge* may proceed to a determination in like manner as if the alien were present. [In any case or class of cases in which the Attorney General believes that such procedure would be of aid in making a determination, he may require specifically or by regulation that an additional immigration officer] *An immigration officer* shall be assigned to present the evidence on behalf of the United States and [in such case such additional immigration officer] shall have authority to present evidence, and to interrogate, examine and cross-examine the alien or other witnesses in the proceedings. [Nothing in the preceding sentence shall be construed to diminish the authority conferred upon the special inquiry officer conducting such proceedings. No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions.] Proceedings before [a special inquiry officer] *an immigration judge* acting under the provisions of this section shall be in accordance with [such regulations, not inconsistent with this Act, as the Attorney General shall prescribe] *rules as are established by the Chairman of the United States Immigration Board.* Such [regulations] *rules* shall include requirements that—

(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;

(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

(4) no decision of deportability shall be valid unless it is based upon [reasonable, substantial, and probative] *substantial* evidence.

The procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section. In any case in which an alien is ordered deported from the United States under the provisions of this Act, or of any other law or treaty, the decision of the [Attorney General shall be final.] *immigration judge shall be final unless reversed on appeal.* In the discretion of the Attorney General, and under such regulations as he may prescribe, deportation proceedings, including issuance of a warrant of arrest, and a finding of deportability under this section need not be required in the case of any alien who admits to belonging to a class of aliens who are deportable under section 241 if such alien voluntarily departs from the United States at his own expense, or is removed at Government expense as hereinafter authorized, unless the Attorney General has reason to believe that such alien is deportable under paragraph (4), (5), (6), (11), (12), (14), (15), (16), (17), (18), or (19) of section 241(a). If any alien who is authorized to depart voluntarily under the preced-

ing sentence is financially unable to depart at his own expense and the Attorney General deems his removal to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for the enforcement of this Act.

* * * * * * *

*(i) Except as otherwise provided in section 291, in any deportation proceeding under this Act the burden of proof shall be upon the Attorney General to establish deportability by a preponderance of the evidence.*

* * * * * * *

COUNTRIES TO WHICH ALIENS SHALL BE DEPORTED; COST OF DEPORTATION

SEC. 243 (a) * * *

* * * * * * *

(h)(1) The Attorney General shall not deport or return any alien (other than an alien described in section 241(a)(19)) to a country if the Attorney Geenral determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

(2) Paragraph (1) shall not apply to any alien if the Attorney General determines that—

(A) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(B) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(C) there are serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States; or

(D) there are reasonable grounds for regarding the alien as a danger to the security of the United States.

*(3) An application for relief under this subsection shall be considered to be an application for asylum under section 208 and shall be considered in accordance with the procedures set forth in that section.*

* * * * * * *

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. (a) The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference or nonpreference visas authorized to be issued under sections [202(e) or] 203(a) within the class to which the alien is chargeable for the fiscal year then current.

(c) The provisions of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 201(b) "or a special immigrant described in section 101(a)(27)(H)) who [hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status] *has failed to maintain continuously a legal status since entry into the United States*; [or] (3) any alien admitted in transit without visa under section 212(d)(4)(C), *or (4) an alien (other than an immediate relative specified in section 201(b)) who entered the United States classified as a nonimmigrant under subparagraph (F) or (M) of section 101(a)(15) or who was admitted as a nonimmigrant visitor without a visa under section 212(l).*

*ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR TEMPORARY OR PERMANENT RESIDENCE*

*SEC. 245A. (a) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for permanent residence if—*

*(1) the alien applies for such adjustment during the one-year period beginning on the date of the enactment of this section,*

*(2)(A) the alien establishes that he entered the United States prior to January 1, 1978, and has resided continuously in the United States in an unlawful status since January 1, 1978,*

*(B) if the alien entered the United States as a nonimmigrant before January 1, 1978, the alien's authority to remain in the United States as a nonimmigrant expired before January 1, 1978, and*

*(C) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof; and*

*(3) the alien—*

*(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2),*

*(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States, and*

*(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.*

*(b)(1) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for temporary residence if—*

*(A) the alien applies for such adjustment during the one-year period beginning on the date of the enactment of this section;*

*(B)(i)(I) the alien establishes that he entered the United States prior to January 1, 1982, and has resided continuously in the United States in an unlawful status since January 1, 1982;*

*(II) if the alien entered the United States as a nonimmigrant before January 1, 1982, the alien's authority to remain in the United States as a nonimmigrant expired before January 1, 1982; and*

*(III) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof; or*

*(ii) the alien as of the date of the enactment of this section, has the status of a Cuban/Haitian entrant (status pending) and has resided continuously in the United States since the date such status was granted; and*

*(C) the alien—*

*(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2),*

*(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States, and*

*(iii) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.*

*(2) During the period an alien is in the lawful temporary resident status granted under paragraph (1)—*

*(A) the Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (3);*

*(B) the Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an "employment authorized" endorsement or other appropriate work permit;*

*(C) the alien is not eligible for any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agenies of Government, except that this subparagraph shall not apply—*

*(i) in the case of an alien described in paragraph (1)(B)(ii),*

*(ii) in the case of such assistance provided to aliens who are determined (in accordance with regulations prescribed by the Attorney General) to require such assistance because of age (in the case of aliens sixty-five years of age or older), blindness, or disability, and*

*(iii) in the case of medical assistance provided to aliens who are determined (in accordance with regulations prescribed by the Attorney General) to require such assistance*

*in the interest of public health or because of serious illness or injury; and*

*(D) a State or political subdivision therein may, to the extent consistent with subparagraph (C), provide that the alien is not eligible for programs of financial assistance furnished under the law of that State or political subdivision.*

*For the purposes of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96–122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.*

*(3) The Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence if the alien—*

*(A) applies for such adjustment during the six-month period beginning with the first day of the twenty-fifth month that begins after the date the alien was granted such temporary resident status;*

*(B) establishes that he has continuously resided in the United States since the date the alien was granted such temporary resident status;*

*(C)(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2), and*

*(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States; and*

*(D) can demonstrate that he either (i) meets the requirement of paragraph (1) of section 312 (relating to minimal understanding of ordinary English), or (ii) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English.*

*(4) The Attorney General shall provide for termination of temporary resident status granted an alien under this subsection—*

*(A) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States, or*

*(B) at the end of the thirty-first month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (3) and such application has not been denied.*

*(c)(1) The Attorney General shall provide that applications for adjustment of status under subsection (a) and subsection (b)(1) may be made to and received, on behalf of the Attorney General, by qualified voluntary agencies which have been designated for such purpose by the Attorney General, as well as to the Attorney General.*

*(2) The provisions of paragraph (14), (20), (21), (25), and (32) of section 212(a) shall not be applicable in the determination of an alien's admissibility under subsections (a)(3)(A), (b)(1)(C)(i), (b)(3)(C)(i), and (b)(4)(A)(i), and the Attorney General, in making such determination with respect to a particular alien, may waive any other provision of such section other than paragraph (9),*

*(10), (23) (except for so much of such paragraph as relates to a single offense of simple possession of thirty grams or less of marihuana), (27), (28), (29), or (33), for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.*

*(3) During the six-month period beginning on the date of the enactment of this section, the Attorney General, in cooperation with qualified voluntary agencies designated under paragraph (1) and the Secretary of Labor, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.*

*(d) In order to carry out this section (including the making of arrangements with qualified voluntary agencies under subsection (c)(1) and the dissemination of information under subsection (c)(3)) there are authorized to be appropriated $10,000,000 for fiscal year 1983.*

* * * * * * *

CHANGE OF NONIMMIGRANT CLASSIFICATION

SEC. 248. The Attorney General may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status, except in the case of—

(1) an alien classified as a nonimmigrant under subparagraph (C), (D), or (K) of section 101(a)(15),

(2) an alien classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who came to the United States or acquired such classification in order to receive graduate medical education or training, [and]

(3) an alien (other than an alien described in paragraph (2)) classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who is subject to the two-year foreign residence requirement of section 212(e) and has not received a waiver thereof, unless such alien applies to have the alien's classification changed from classification under subparagraph (J) of section 101(a)(15) to a classification under subparagraph (A) or (G) of such section, [and]

*(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l).*

* * * * * * *

CHAPTER 8—GENERAL PENALTY PROVISIONS

* * * * * * *

UNLAWFUL BRINGING OF ALIENS INTO UNITED STATES

SEC. 273. (a) * * *

* * * * * * *

(d) The owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from

any place outside thereof who fails to detain on board or at such other place as may be designated by an immigration officer any alien stowaway until such stowaway has been inspected by an immigration officer, or who fails to detain such stowaway on board or at such other designated place after inspection if ordered to do so by an immigration officer, or who fails to deport such stowaway on the vessel or aircraft on which he arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which he arrived when required to do so by an immigration officer, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each alien stowaway, in respect of whom any such failure occurs. Pending final determination of liability for such fine, no such vessel or aircraft shall be granted clearance, except that clearance may be granted upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs. The provisions of section 235 for detention of aliens for examination before [special inquiry officers] *immigration judges* and the right of appeal provided for in section 236 shall not apply to aliens who arrive as stowaways and no such alien shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Attorney General may prescribe for the ultimate departure or removal or deportation of such alien from the United States.

BRINGING IN AND HARBORING CERTAIN ALIENS

SEC. 274. (a) Any person, including the owner, operator, pilot, master, commanding officer, agent or consignee of any means of transportation who—

(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

(2) knowing that he is inthe United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this Act or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or

both, for each alien in respect to whom any violation of this subsection occurs[: *Provided, however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring].

* * * * * * *

*(c) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States such alien by himself or through another in any manner whatsoever, regardless of whether or not fraudulent, evasive, or surreptitious means are used and regardless of any official action which may later be taken with respect to such alien, shall, for each transaction constituting a violation of this subsection (regardless of the number of aliens involved)—*

*(1) be fined an amount equal to $2,500, the imposition of which may not be suspended by the court, plus, in the court's descretion, an additional amount not to exceed $2,500 for each such alien in respect to whom a violation of this subsection occurred, or be imprisoned not to exceed one year, or both, or*

*(2) in the case of a second or subsequent offense, an offense done for the purpose of commercial advantage or private gain, an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer, or an offense during which either the offender or the alien with the knowledge the offender makes any false or misleading statement or engages in any act or conduct intended to mislead any officer, agent, or employee of the United States, be fined $2,500, the imposition of which may not be suspended by the court, plus, in the court's discretion, an additional amount not to exceed $7,500 for each such alien in respect to whom a violation of this subsection occurred, or be imprisoned not to exceed five years, or both.*

[(c)](*d*) No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

*UNLAWFUL EMPLOYMENT OF ALIENS*

*Sec. 274A. (a) (1) It is unlawful for a person or other entity after the date of the enactment of this section—*

*(A) to hire, or for consideration to recruit or refer, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in paragraph (4)) with respect to such employment, or*

*(B) to hire for employment in the United States an individual without complying with the requirements of subsection (b).*

*Subparagraph (B) shall not apply to a person or entity which employs three or fewer employees.*

*(2) It is unlawful for a person or other entity who, after hiring an alien for employment subsequent to the date of the enactment of this*

*Act and in accordance with paragraph (1), continues to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.*

*(3) A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.*

*(4) As used in this section, the term "unauthorized alien" means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.*

*(b) Except as provided in subsection (c), the requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, that—*

*(1) the person or entity must attest, under penalty of perjury and on a form established by the Attorney General by regulation, that he has verified that the individual is eligible to be employed (or recruited or referred for employment) in accordance with subsection (a)(1)(A) by examining the individual's—*

*(A) United States passport, or*

*(B)(i) social security account number card (issued by the Social Security Administration under section 205(c)(2)(B) of the Social Security Act and in such secure form, if any, as the Administrator of Social Security has made available) or United States birth certificate, and*

*(ii)(I) alien documentation, identification, and telecommunication card, or similar fraud-resistant card issued by the Attorney General to aliens and designated for use for this purpose,*

*(II) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds sufficient for purposes of this section, or*

*(III) in the case of individuals under sixteen years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in subclause (II), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification;*

*(2) the individual must attest, under penalty of perjury and on the form established by the Attorney General for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment; and*

*(3) after completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or of the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending on the later of five years after such date or, in the case of the hiring of the individual, one year after the date the individual's employment is terminated.*

*A person or entity has complied with paragraph (1) with respect to examination of a document if the document reasonably appears on its face to be genuine.*

*(c) (1) Within three years after the date of the enactment of this section, the President shall implement such changes in or additions to the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States, which system shall conform to the requirements of paragraph (2).*

*(2) Such system shall be designed in a manner so that—*

*(A) the system will reliably determine that a person with the identity claimed by an employee or prospective employee is eligible to work, and that the employee or prospective employee is not claiming the identity of another individual;*

*(B) if the system requires an examination by an employer of any document, such document must be in a form which is resistant to counterfeiting and tampering, unless the President and the Judiciary Committees of the Congress have determined that such form is unnecessary to the reliability of the system;*

*(C) personal information utilized by the system is available to Government agencies, employers, and other persons only to the extent necessary for the purpose of verifying that the individual is not an unauthorized alien;*

*(D) a verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld for any reason other than that the employee or prospective employee is an unauthorized alien;*

*(E) the system shall not be used for law enforcement purposes (other than for enforcement of this section or section 1546 of title 18, United States); and*

*(F) if the system requires individuals to present a card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this section (or enforcement of section 1546 of title 18, United States Code) nor to be carried on one's person.*

*(d) (1) (A) In the case of a person or entity which violates paragraph (1) (A) or (2) of subsection (a) and which—*

*(i) has not previously been determined (after opportunity for a hearing under paragraph (4) (A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of $1,000 for each unauthorized alien with respect to which the violation occurred, or*

*(ii) has previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil pentlty of $2,000 for each unauthorized alien with respect to which the violation occurred.*

*(B) In the case of a person or entity which has engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the person or entity shall be fined not more than $1,000, imprisoned not more than six months, or both, for each violation.*

*(2) Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.*

*(3) A person or entity which violates subsection (a)(1)(B) shall be subject to a civil penalty of $500 for each individual with respect to which such violation occurred.*

*(4)(A) Before assessing a civil penalty under this subsection against a person or entity, the Attorney General shall provide the person or entity with notice and the opportunity to request a hearing respecting the violation. Any hearing so requested shall be conducted before an immigration officer designated by the Attorney General.*

*(B) If the person or entity against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Attorney General shall file a suit to collect the amount in any appropriate district court of the United States. In any such suit or in any other suit seeking to review the Attorney General's determination, the suit shall be determined solely upon the administrative record upon which the civil penalty was assessed and the Attorney General's findings of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.*

*(e) In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.*

*(f) The provisions of this section preempt any State or local law imposing civil or criminal sanctions upon those who employ, or refer or recruit for employment, unauthorized aliens.*

*(g) The President shall monitor the implementation of this section (including the effectiveness of the verification system described in subsection (b) and the status of the development and implementation of the secure verification system described in subsection (c)) and the impact of this section on employment of citizens and aliens in the United States, on the illegal entry of aliens into the United States, and on the failure of aliens who have legally entered the United States to remain in legal status. For the purpose of conducting such monitoring and beginning development of the system described in subsection (c), there are authorized to be appropriated $10,000,000 for fiscal year 1983.*

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JURISDICTION OF DISTRICT COURTS

SEC. 279. (*a*) [The] *Except as otherwise provided under section 106, the* district courts of the United States shall have jurisdiction of all causes, civil and criminal, arising under any of the provisions of this title. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when brought by the United States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with a violation under section 275 or 276 may be apprehended. No suit or proceeding for a violation of any of the provisions of this title shall be settled, compromised, or discontinued without the consent of the court in which it is pending and any such settlement, compromise, or discontinuance shall be entered of record with the reason therefor.

(*b*) *An action for judicial review of any administrative action arising under this Act, or regulations issued pursuant to this Act, other than a final order of deportation as provided in section 106(a) of this Act, may not be filed later than thirty days after the date of the final administrative action or from the effective date of this section, whichever is later.*

## CHAPTER 9—MISCELLANEOUS

[NONIMMIGRANT VISA FEES] *NONIMMIGRANT VISA FEES AND BORDER FACILITY FEES*

SEC. 281. (*a*) The fees for the furnishing and verification of applications for visas by nonimmigrants of each foreign country and for the issuance of visas to nonimmigrants of each foreign country shall be prescribed by the Secretary of State, if practicable, in amounts corresponding to the total of all visa, entry, residence, or other similar fees, taxes, or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents: *Provided*, That nonimmigrant visas issued to aliens coming to the United States in transit to and from the headquarters district of the United Nations in accordance with the provisions of the Headquarters Agreement shall be gratis.

(*b*) *The Attorney General, after consultation with the Secretary of State, shall impose fees for an alien's use of border facilities or services of the Service in an amount necessary to make the total of such fees substantially equal to the cost of maintaining and operating such facilities and services.*

* * * * * * *

RIGHT TO COUNSEL

SEC. 292. [In any exclusion or deportation proceeding before a special inquiry officer and in any appeal proceeding before the Attorney General from any such exclusion or deportation proceedings,] *In any proceeding or hearing before an administrative law judge and in any appeal before the United States Immigration Board from any such proceeding*, the person concerned shall have the privilege of being represented (at no expense to the Government *and at no unreasonable delay*) by such counsel, authorized to practice in such proceedings, as he shall choose.

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## TITLE III—NATIONALITY AND NATURALIZATION

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### CHAPTER 4—MISCELLANEOUS

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#### PROCEEDINGS FOR DECLARATION OF UNITED STATES NATIONALITY IN THE EVENT OF DENIAL OF RIGHTS AND PRIVILEGES AS NATIONAL

SEC. 360 (a) * * *

* * * * * * *

(c) A person who has been issued a certificate of identity under the provisions of subsection (b), and while in possession thereof, may apply for admission to the United States at any port of entry, and shall be subject to all the provisions of this Act relating to the conduct of proceedings (and appeals thereof) involving aliens seeking admission to the United States. [A final determination by the Attorney General that any such person is not entitled to admission to the United States shall be subject to review by any court of competent jurisdiction in habeas corpus proceedings and not otherwise. Any person described in this section who is finally excluded from admission to the United States shall be subject to all the provisions of this Act relating to aliens seeking admission to the United States.]

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## FARM LABOR CONTRACTOR REGISTRATION ACT OF 1963

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#### ISSUANCE OF CERTIFICATE OF REGISTRATION

SEC. 5. (a) * * *

(b) Upon notice and hearing in accordance with regulations prescribed by him, the Secretary may refuse to issue, and may suspend, revoke, or refuse to renew a certificate of registration to any farm labor contractor if he finds that such contractor—

(1) * * *

* * * * * * *

[(6) has recruited, employed, or utilized, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment;]

*(6) has been found to have violated paragraph (1)(A) or (2) of section 274A(a) of the Immigration and Nationality Act;*

* * * * * * *

#### OBLIGATIONS AND PROHIBITIONS

SEC. 6. Every farm labor contractor shall—

(a) * * *

* * * * * * *

[(f) refrain from recruiting, employing, or utilizing, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment;]

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PENALTY PROVISIONS

SEC. 9. (a) * * *

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[(c) Notwithstanding subsections (a) and (b) of this section, any farm labor contractor who commits a violation of subsection 6(f) of the Act or any regulations promulgated thereunder shall upon conviction be fined not to exceed $10,000 or sentenced to a prison term not to exceed three years, or both, if the person committing such violation has failed to obtain a certificate of registration pursuant to this Act or is one whose certificate has been suspended or revoked by the Secretary.]

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# TITLE 18, UNITED STATES CODE

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CHAPTER 75—PASSPORTS AND VISAS

Sec.

1541. Issuance without authority.
1542. False statement in application and use of passport.
1543. Forgery or false use of passport.
1544. Misuse of passport.
1545. Safe conduct violation.
1546. Fraud and misuse of visas, permits, and other [entry] documents.

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## § 1546. Fraud and misuse of visas, permits, and other [entry] documents

(*a*) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, [or other document required for entry into the United States] *border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States*, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, [or document,] *border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States*, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any

immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement—

Shall be fined not more than [$2,000] *$5,000* or imprisoned not more than five years, or both.

*(b) Whoever without authority of the issuing agency and with unlawful intent—*

*(1) photographs, prints, or in any manner makes or executes any engraving, photograph, print, or impression in the likeness of—*

*(A) any document presented to satisfy a requirement of the Immigration and Nationality Act or regulations issued thereunder, or*

*(B) any document presented to obtain a required document described in subparagraph (A);*

*(2) sells, transfers, distributes, presents, or uses, or possesses with the intent to sell, transfer, distribute, present, or use, an engraving, photograph, print, or impression in the likeness of a document described in subparagraph (A) or (B) of paragraph (1);*

*(3) alters any document described in subparagraph (A) or (B) of paragraph (1) relating to another person; or*

*(4) sells, transfers, distributes, presents, or uses, or possesses with the intent to sell, transfer, distribute, present, or use, any document described in subparagraph (A) or (B) of paragraph (1) relating to another person, whether or not altered,*

*shall be fined not to exceed $5,000 or imprisoned not more than five years, or both.*

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## PUBLIC LAW 89-732

[AN ACT To adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes.

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, notwithstand-

ing the provisions of section 245(c) of the Immigration and Nationality Act, the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least two years, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever date is later. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

[SEC. 2. In the case of any alien described in section 1 of this Act who, prior to the effective date thereof, has been lawfully admitted into the United States for permanent residence, the Attorney General shall, upon application, record his admission for permanent residence as of the date the alien originally arrived in the United States as a nonimmigrant or as a parolee, or a date thirty months prior to the date of enactment of this Act, whichever date is later.

[SEC. 3. Section 13 of the Act entitled "An Act to amend the Immigration and Nationality Act, and for other purposes", approved October 3, 1965 (Public Law 89–236), is amended by adding at the end thereof the following new subsection:

["(c) Nothing contained in subsection (b) of this section shall be construed to affect the validity of any application for adjustment under section 245 filed with the Attorney General prior to December 1, 1965, which would have been valid on that date; but as to all such applications the statutes or parts of statutes repealed or amended by this Act are, unless otherwise specifically provided therein, continued in force and effect."

[SEC. 4. Except as otherwise specifically provided in this Act, the definitions contained in sections 101 (a) and (b) of the Immigration and Nationality Act shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.]

## ADDITIONAL VIEWS OF SENATOR DOLE

Part A of Title 1 of S. 2222 as reported from the Committee on Judiciary establishes federal criminal sanctions for employers who knowingly hire illegal aliens. The employer must verify he had examined documents which establish both (a) eligibility to work, and (b) identity showing that the individual presenting proof of eligibility to work is not presenting documents relating to another individual. A U.S. passport would establish both. Otherwise one document of each type would be presented: (a) Social Security card or birth certificate, and (b) INS-issued card, drivers license, other State-issued card, or other document approved by the Attorney General.

The above verification procedure would be in effect for a three-year transitional period. During that time, the President would be directed to develop and implement a "secure" system to verify work eligibility. The system would not be available for any other law enforcement purpose and if it were to involve the use of a card, the card could not be used for any other purpose. However, if the transitional procedure proved to be effective, the new system would not be required.

These provisions, which constitute an attempt to deal with a highly complex set of issues relating to personal identification systems, may well cause more problems than they solve. They could lead to the establishment of a federal "big brother" database on every employed person in the United States which would be extremely costly, fraught with potential serious violations of individual privacy and freedom and yet not be available for other important identification purposes such as obtaining food stamps and buying guns.

Section 101(C)(1) should be amended to broaden the scope of the directive to the President to establish a "secure system" to determine employment eligibility. This effort should be expanded in scope to:

(1) take into consideration matters relating to protection of individual privacy,

(2) coordination with and consideration of other efforts, both federal and state, to develop identification systems for related purposes including but not limited to: social security identification, drivers license, food stamp eligibility, passports, eligibility to purchase firearms and other employment purposes;

(3) the system should explore the state-of-the-art of technology relating to the "positive identification" of an individual;

(4) the development of individual identification databases on a decentralized basis with file maintenance and update being conducted wherever possible by state and local authorities;

(5) if decentralized databases are utilized, there should be appropriate authorization for interstate exchange and access to the databases by authorized enforcement or other officials; and

(6) criminal sanctions should be imposed for willful misuse or unauthorized disclosure of this information.

Without such changes, as outlined above, the provisions of the com-

mittee bill could well lead to the establishment of an expensive and redundant personal identification system which would be overly centralized at the federal level and without adequate safeguards to prevent abuse of personal information on virtually every individual in the United States as well as tens of thousands of individuals seeking admission to the United States for employment purposes.

Recent hearings of the Criminal Laws Subcommittee and the Permanent Subcommittee on Investigations have amply demonstrated widespread misuse of current forms of identification such as passports, social security cards, drivers licenses and so forth. It is the intention of the Senator from Kansas to offer an amendment to S. 2222 which will address this problem.

BOB DOLE.

## ADDITIONAL VIEWS OF SENATOR EAST

I am greatly troubled by this bill's blanket amnesty for untold millions of illegal aliens. I am convinced that mass amnesty would undercut enforcement of our laws and contribute to future illegal immigration. By rewarding and protecting foreigners who have intentionally violated the criminal law of this nation, Congress would be perceived by many citizens as abetting lawbreaking and failing to uphold and defend the law of the land.

The legalization provisions of the bill would give legal permanent resident status to illegal aliens who entered prior to January 1, 1978 and legal temporary resident status to those entering on or after January 1, 1978 and prior to January 1, 1982. Aliens given temporary resident status would be required to make some efforts to learn rudimentary English, and would have six months to adjust to permanent resident status after two years in this temporary status or face termination of their temporary resident status by the Attorney General. Temporary resident aliens would have limited rights to public assistance while permanent resident aliens can participate in almost every program available to American citizens, including food stamps, SSI, AFDC, public housing, unemployment compensation, legal aid, and Medicaid, to name just a few social welfare programs. Both groups of legalized aliens would be free to take any job they could obtain. There would be no government approval required for employment of these aliens nor certification that their employment would not displace or adversely effect wages and working conditions of Americans. After five years as permanent residents they could apply for United States citizenship. As United States citizens they would be entitled to bring in their immediate relatives (spouses, children, and parents of adult citizens) without any numerical limit.

No matter how much sympathy we feel for the impoverished masses of the world's underdeveloped nations, our first duty as elected representatives is to protect American citizens and the future of our nation. In this present economic climate, with more than ten million unemployed Americans, we have no right to give jobs to foreign nationals who are illegally present in our country.

The general public sees amnesty as a concession made at the expense of American workers. Paul S. Egan, representing the American Legion, testifying before the Immigration and Refugee Policy Subcommittee on October 29, 1982, said:

> The American Legion regards the supplanting of veterans and other Americans with illegals as unconscionable.
>
> * * * * *
>
> Jobs held by illegals should and could be held by Americans.
>
> * * * * *
>
> To say to Americans . . . that those illegally in the country and holding jobs desired by Americans will be allowed to retain them while American workers must fend for themselves is patently unfair.

Professor C. Barry McCarty. in testimony submitted to the subcommittee on behalf of Conservatives for Immigration Reform, stated:

> . . . [T]he "Immigration Reform and Control Act of 1982" seems more concerned with protecting the alien labor supply of American employers and the employment opportunities of amnestied aliens than with opening jobs for U.S. workers.

While economists may argue endlessly about the precise effects of illegal aliens on our economy, the testimony presented to the subcommittee establishes that many illegal aliens are holding good-paying jobs that Americans would gladly accept. As the report acknowledges, illegal immigration contributes to our high unemployment rate and depresses wages and working conditions of American workers, particularly low income citizens. Experts such as former INS Commissioner Leonard Chapman and former Labor Secretary Ray Marshall, despite their differences of political philosophy, agree that removing illegal aliens from the work force could open jobs for millions of unemployed Americans.

With the federal government in debt in excess of one trillion dollars, we cannot afford to support millions of our citizens on public assistance and unemployment programs while millions of jobs are filled by illegal aliens. The Congressional Budget Office has estimated that each unemployed American receives an average of about $7,000 per year in unemployment and welfare benefits. If only one million Americans are displaced by illegal aliens, aid to those unemployed Americans cost the taxpayers seven billion dollars every year. The psychological and social costs of unemployment should also be considered.

Amnesty would also impose a substantial welfare burden on American taxpayers. Illegal aliens currently fearful of claiming welfare benefits will be legally entitled to benefits as permanent residents and restricted benefits as temporary residents. Estimates of the cost of added welfare payments and services are difficult to make due to the uncertainty as to the number of illegal aliens who would be legalized and the number who might avail themselves of welfare programs. The National Association of Counties (NACO) assumed very conservatively that 1.2 million aliens would receive permanent resident status and 1.5 million aliens illegally entering in 1978 and 1979 would get temporary resident status (this was prior to adoption of the Kennedy amendment changing the cutoff date to January 1, 1982). NACO estimated that the amnesty program would increase state and local cash and medical assistance costs by over $546 million in the first year of the program. When those aliens granted temporary resident status become permanent residents after two years, the costs will increase even more. The Department of Health and Human Services (HHS) estimated (before adoption of the Kennedy amendment) that amnesty will result in added welfare costs to the federal government of $841.9 million annually. The "likely to become public charge" ground for exclusion and deportation is no protection for the American taxpayer given court rulings and administrative interpretations allowing permanent resident aliens to make full use of welfare programs with impunity. The INS could employ several thousand more American citizens to protect our borders and apprehend illegal aliens for a tiny fraction of the increased welfare costs of amnesty. Those costs are shown by the following charts of estimated increases in welfare costs prepared by

HHS and NACO. These figures are particularly alarming considering that adoption of the Kennedy legislation date amendment added perhaps one million more illegal aliens to the temporary resident alien category.

## Department of Health and Human Services

### First year cost estimates for Simpson-Mazzoli bill—H.R. 5872/S. 2222

*Base population*

*Permanent residents=20 percent of all illegals=1.2 million.*—Computation: 20 percent of all illegals entered or have remained illegally in the U.S. since 1/1/78 and will be eligible for permanent residence.

*Temporary residents=25 percent of all illegals=1.5 million.*—Computation: 45 percent of all illegals (6 million) entered or remained illegally in the U.S. since 1/1/80. Twenty percent will qualify for adjustment to permanent status. The remaining 25 percent will qualify for adjustment to temporary status.

| Program | Unit cost | Dependency rate (percent) | Persons eligible (millions) | Extended cost (millions) |
|---|---|---|---|---|
| Permanent residents: | | | | |
| AFDC | $1,278 | 10 | 1.2 | $153.4 |
| SSI | 2,100 | 5 | 1.2 | 126.0 |
| Medicaid | 750 | 20 | 1.2 | 180.0 |
| Subtotal | | | | 459.4 |
| Temporary residents: | | | | |
| AFDC | [1] 1,278 | NA | None | 0 |
| SSI | 2,100 | 5 | 1.5 | 157.5 |
| Medicaid | 750 | 20 | 1.5 | 225.0 |
| Subtotal | | | | 382.5 |
| Total cost | | | | 841.9 |

[1] Fiscal year 1980 figure.

### National Association of Counties—estimate of added cash and medical assistance costs resulting from S. 2222/H.R. 5872—1st yr only

| Program | Unit cost | Dependency rate (percent) | Persons eligible (millions) | (Costs in millions) Federal | Non-Federal | Total |
|---|---|---|---|---|---|---|
| Permanent residents: | | | | | | |
| AFDC | $1,350 | 7.0 | 1.2 | $62.4 | $51.0 | $113.4 |
| SSI | 3,100 | 3.0 | 1.2 | 85.5 | 26.1 | 111.6 |
| Medicaid | 1,600 | 12.5 | 1.2 | 132.0 | 108.0 | 240.0 |
| Non-Medicaid health costs | 1,200 | 4.0 | 1.2 | 0 | 57.6 | 57.6 |
| G.A | 2,100 | .80 | 1.2 | 0 | 20.2 | 20.2 |
| Subtotal | | | | 279.9 | 262.9 | 542.8 |
| Temporary residents: | | | | | | |
| SSI | 3,100 | 1.0 | 1.5 | 35.6 | 10.9 | 46.5 |
| Medicaid | 1,600 | 15.0 | 1.5 | 198.0 | 162.0 | 360.0 |
| Non-Medicaid health costs | 1,000 | 5.0 | 1.5 | 0 | 75.0 | 75.0 |
| G.A | | | 1.5 | 0 | 36.0 | 36.0 |
| Subtotal | | | | 233.6 | 283.9 | 517.5 |
| Total, all legalized aliens | | | | 513.5 | 546.8 | 1,060.3 |

In addition to the foregoing burdens amnesty would impose on Americans, I fear that it might increase illegal immigration in the future. Amnesty establishes a dangerous precedent that may encourage foreigners to enter illegally hoping to benefit from future legalizations. Foreigners facing long immigrant visa backlogs, and seeing their lawbreaking fellow citizens rewarded with amnesty, may decide to enter illegally. Amnested illegal aliens may decide to bring relatives over illegally once they have a secure immigration status and the right to participate in welfare programs. Many illegal aliens are here simply to work for a few years and do not desire to become a part of our society. Amnesty, with its cornucopia of welfare benefits, would make permanent settlement so attractive that many illegal aliens would decide to stay and send for parents, spouses, children, brothers and sisters, grandparents and the entire extended family of Third World cultures. It is reasonable to predict that the same groups lobbying for blanket amnesty today (and against any realistic enforcement of our immigration laws) will join the millions of aliens this bill would legalize in calls for a second amnesty a few years from now.

Amnesty is not only unfair to the American worker and taxpayer, it discriminates against foreigners who obey our immigration laws and wait patiently abroad for immigrant visas. The visa backlog is now in the hundreds of thousands and waiting periods of seven or eight years are common. Amnesty will not only be unfair to these law-abiding foreigners, it may delay their lawful immigration for years. Those amnestied aliens who receive permanent resident status (including the temporary residents who adjust status two years) receive the right to bring in family members within the preference system, thus further delaying lower preference prospective immigrants.

The negative impact on other prospective immigrants will be even more dramatic five years after the first awards of permanent resident status to illegal aliens. As hundreds of thousands, and perhaps millions, of amnestied aliens become American citizens in 1988 and subsequent years, they will begin to bring in hundreds of thousands of immediate relatives subject to no numerical limitation. Under section 201(a) of the bill the number available for the family reunification preference categories would be determined by subtracting the number of immediate relatives admitted in the prior year from 350,000. While this is a needed reform to control increasing admissions, when combined with the bill's mass amnesty, unfair penalization of other prospective immigrants will result. When immediate relatives of naturalized former amnestied aliens are added to the normal flow of immediate relatives of U.S. citizens (currently running in excess of 150,000 annually and growing steadily), it becomes quite possible that there will be no family reunification visas available for several years beginning in 1989. It is reasonable to predict that many frustrated visa seekers will enter illegally to join their relatives and wait for their visas here.

No one knows how many illegals are here or how many will apply for amnesty. Some experts, including former INS officers, have estimated that there may be over ten million illegal aliens present in our nation. The Select Commission on Immigration and Refugee Policy estimated the number of illegal aliens at between 3.5 million and six million in 1978. Most experts assume that at least 500,000 more have

entered annually in the four years since that estimate. The Los Angeles County Board of Supervisors estimated on April 15, 1982, that there were 1.1 million illegal aliens in that one county. I can only caution that, if the number should prove to be in the upper range of the estimates, the added welfare costs will run into billions of dollars annually and the numbers of immediate relatives (of amnestied aliens become citizens) immigrating might increase legal immigration significantly above the 425,000 level.

Realistic observers assume that many illegal aliens entering after the January 1, 1982 cutoff date or even arriving in the next few months, will obtain amnesty using fraudulent rent receipts, false affidavits from friends, and other fraudulent documents. We must remember that illegal aliens live in a world where the use of fraudulent documents is common. Reports of sales of "amnesty kits" should come as no surprise.

Whether the understaffed and beleaguered INS could properly screen millions of applicants for amnesty and perform its other duties is open to question. While section 301 of the bill requires the Attorney General to work with voluntary agencies (VOLAGS) or other community or private organizations in processing amnesty applications, the objectivity and qualifications of employees of such organizations is open to question. The otherworldly orientation of the social workers of the VOLAGS makes them kind of helpers of poor immigrants (legal and illegal), but it seems unlikely that they will worry about legal niceties. I would prefer to see trained INS employees processing applications for legislation.

Amnesty flies in the face of public opinion. Governor William P. Clements, Jr. of Texas expressed the thinking of most Americans when he stated before a joint hearing of the Senate and House subcommittees:

> The people of Texas will never accept an amnesty provision. Our U.S. citizenship is the most precious legacy we have and must be treated as such rather than being bestowed on individuals whose lack of respect for our immigration laws has caused their illegal status.

I am not persuaded by the reasons given by my colleagues in support of amnesty. Their views described attempts to locate "well settled" illegal aliens as a "wasteful use" of limited INS resources. Interior enforcement will always be more expensive per illegal alien apprehended than patrolling the border. Vigorous efforts to apprehend illegal aliens that evade the Border Patrol are absolutely essential. The presence of millions of illegal aliens is not due to waste or misguided INS priorities; the problem is the inadequate resources Congress has given the INS.

The second stated goal of amnesty is to protect the labor pool of employers who now hire illegal aliens. I am not unmindful of the widespread opinion in sectors of the business community that there are not enough Americans willing to take low-paying jobs. However, amnesty will not solve such labor shortages. Illegal aliens presently in the lowest-paying jobs will be free to look for better jobs or, once they are granted permanent resident status, make use of public assistance. In a memorandum to the members of the Senate Judiciary

Committee dated May 19, 1982, our distinguished colleague Senator Hayakawa noted that amnesty is not a solution to the labor needs of Western agriculture: "Once legalized, rural workers will migrate to cities where year-round employment is available." The answer to American agriculture's need for temporary seasonal labor is contained, not in amnesty, but in a foreign worker program such as the streamlined H–2 program contained in the bill. Other shortages of year-round unskilled labor could be addressed by reforming our bloated welfare state to require able-bodied citizens to work at any job available. Because the employer sanctions apply only to persons hired in the future, there should be no sudden disruption of existing work forces.

The goal of eliminating an illegal subclass could be achieved more appropriately by repatriation than by amnesty. The puzzling talk of "equities" developed by illegal aliens long resident in our country has now been replaced by the "wipe the slate clean" rationale for amnesty. Mr. Egan of the American Legion responded to that rationale in his testimony:

> . . . amnesty proposals beg the the question of long range solutions to the problem of illegal immigration. Amnesty for illegals makes no more sense to us than solving problems of prison overcrowding by releasing all prisoners with a view toward starting with a clean slate. Illegals will continue to enter the country as long as potent economic incentives exist and for as long as they are permitted to get away with it . . .

I also believe the specter of "mass deportations" raised by amnesty proponents is unrealistic. Even with a determined Congress and President, it would take years to locate the millions of illegal aliens who have entered during a decade of inattention by Congress and three administrations. To say that such a gradual return to proper immigration control cannot be achieved without wholesale violations of the rights of Americans of Hispanic descent is an insult to this nation and the dedicated employees of the INS, many of whom are Hispanic Americans. There is nothing inhumane in returning foreigners here illegally to their native lands. Vociferous organizations which champion amnesty also have opposed employer sanctions, INS workplace raids, INS residential area control, and even replacing torn fences on our southern border. Before we give too much weight to their opinions, we should remember the views of the majority of our citizens who oppose amnesty. In order to secure needed legislation to deal with illegal immigration we should not have to offer amnesty to attempt to placate those who champion lawbreakers.

Lest my concern with rewarding lawbreaking through amnesty and my opposition to illegal immigration be misinterpreted as hostility to immigrants or immigration, I think it sufficient to say that I favor continuation of our tradition as a home for refugees fleeing tyranny and immigrants willing to enter pursuant to our laws. Every year we accept more legal immigrants and refugees than all the other nations of the world combined. I am proud of that. I would oppose any attempt to abandon that tradition. I hope we will always be compassionate and generous to those wishing to become Americans. But

compassion and generosity have their limits. Our immigration laws limit the number of immigrants we admit each year so that we can absorb them without adversely affecting our own citizens. If Congress and the executive branch fail to control illegal immigration, the American people may grow impatient and demand an end to all immigration. Such a tragedy can be avoided by firm enforcement of fair laws. Additional study is needed before we weaken enforcement of our laws by a blanket amnesty for illegal aliens.

JOHN P. EAST.

## ADDITIONAL VIEWS OF SENATOR CHARLES E. GRASSLEY

Approximately thirty years have passed since the last major reform of United States immigration policy. The time has arrived to undergo this painful process again.

Theodore H. White described the situation in which America finds itself, resulting from our current set of chaotic complicated immigration laws,

> One starts with the obvious: That the United States has lost one of the cardinal attributes of sovereignty—it no longer controls its own borders. Its immigration laws are flouted by aliens and citizens alike, as no system of laws has been flouted since prohibition. And the impending transformation of our nation, its culture, and its ethnic heritage could become one of the central debates of the politics of the 1980s. See White, "America in Search of Itself," p. 361 (1982).

The debate has already begun and let us hope that S. 2222 is just the first step in the reformation process.

Though most Americans currently residing in the United States owe their presence here to the open door immigration policies of the past the perpetuation of the myth that this country is one without limits can only prove harmful in the long run. Technology is one of the major reasons why today's immigration phenomenon is entirely different from the immigration waves of the past. As Mr. White continued to explain,

> . . . The earlier immigrants from Europe spent weeks trekking to ports, and then more weeks in the steerage of tramp steamers, to reach the promised land. A modern immigrant can be here in three or four hours from any airport in the Caribbean, in fifteen hours from Asia. . . . It once took years of work and savings for an honest man to buy passage for his family to join him. Now after six months a diligent immigrant can afford air passage for all the rest of his family. The result has been a stampede, almost an invasion. Ibid., pp. 361–362.

America currently accepts over twice as many legal immigrants as the rest of the world combined. This does not include the estimated three to six million aliens illegally in the country. Control of our borders is essential in order to protect U.S. citizens from a continued high unemployment rate and to foster a reliance on our laws by those outside our country who wish to reside here.

The Immigration Reform and Control Act is essentially a well-conceived product which may go far in achieving our badly needed reforms. The provisions of the bill relating to employer sanctions, in-

creased interior and border enforcement and a secure worker eligibility identity system are necessary to regain control over our borders.

However, the bill as reported out of committee contains some major flaws, and unless rectified may serve to provide a stimulus for further illegal entry. The legalization program as embodied in S. 2222 is one such provision.

Some form of legalization is not only in the best interests of those undocumented aliens already firmly residing here but for the citizenry of the country as well. A large undocumented population contributes to the creation and perpetuation of an exploited subclass society afraid to report crimes and illnesses which endanger the public health.

A variety of programs were presented to the Select Commission on Immigration and Refuge Policy, a bipartisan group established by the Carter Administration to study solutions to our immigration problems, and the Senate Subcommittee on Immigration and Refugee Policy ranging from a massive deportation program to total amnesty for all aliens upon enactment of the bill. The Select Commission's final report stated that it was guided by two major principles in developing its legalization recommendations:

1. The legalization program should be consistent with U.S. interests, and
2. The program should not encourage further undocumented migration.

The approach adopted in S. 2222 is inconsistent with these goals. This provision provides that all illegal aliens who have resided continuously in the U.S. up to January 1, 1978 are eligible for permanent residence status upon enactment of the bill. Illegal aliens who have resided continuously in the U.S. between January 1, 1978 and January 1, 1982 are eligible to apply for temporary resident status with access to permanent resident status for two years following enactment.

The Select Commission stated the following in its legalization discussion:

> The Commission believes that a legalization program is a necessary part of enforcement, but it does not believe that the United States should begin the process of legalization until new enforcement measures have been instituted to make it clear that the United States is determined to curtail new flows of undocumented/illegal aliens. Without more effective enforcement legalization could serve as a stimulus to further illegal entry. The Select Commission is opposed to *any program* that could precipitate such movement. Further, the *absence of effective enforcement could lead to a low participation rate in the legalization program.* Continuation and enhancement of enforcement efforts in this country should encourage many undocumented/illegal aliens to regularize their status under the legalization program (emphasis added).

Senator Simpson made clear his intent when he voted for legalization during the Select Commission's deliberations:

> *No amnesty program should be adopted until effective additional enforcement measures are in place*—not merely "implemented," but shown actually *effective in substantially eliminating illegal immigration.* It was in this context that I supported the concept (emphasis added).

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Though Senator Simpson's views may have changed I concur with his original approach. The goal of curtailed illegal immigration will not be realized until effective enforcement measures are in place. To me this means the development of a secure worker eligibility system. As long as use of forged documents remains the major avenue for entry into the United States, the massive flows will continue. The legalization program contained in S. 2222 can only serve to encourage further undocumented migration. The better approach is to link the granting of permanent residence to the development of a new identifier or the upgrading of a current system. This identifier will ensure that the new enforcement measures are working.

In the meantime, these aliens would be allowed to remain in the country in legal status. However, they would not be immediately eligible for all the social service programs currently available to U.S. citizens. Permanent resident status could be granted on satisfaction of two conditions:

1. The implementation of the verification system.
2. Seven years of continuous residency.

In addition the eligibility date should be returned to January 1, 1980 as contained in the original bill.

The advantages of this proposal are apparent. The delay would allow for an accurate count as to how many people might be eligible for benefits down the road and time would be available for many of these aliens to become established and ineligible for such programs.

The eligibility date corresponds to both the Select Commission's and the Subcommittee's recommendations. That date along with the residency requirement will ensure that legalized aliens have established the necessary equities to remain in the country while providing for lower potential welfare spending.

The other major area where difficulty lies is within Section 111 of the bill. That section provides that the sense of the Congress is that increased enforcement activities of the INS is an essential element of immigration control. However, in that the Administration does not plan for a significant increase in immigration enforcement personnel, some outside assistance is necessary in order to effectively enforce the immigration laws.

The amendment I offered to S. 2222 and which was adopted in the Immigration Subcommittee would authorize the Attorney General of the United States to enter into agreements with local law enforcement agencies so that such agencies can assist the U.S. Immigration Service in the extremely difficult task of regaining control over immigration. Though the proposal was removed from the bill in the full committee mark-up, clear support was demonstrated by the 7–10 vote.

In proposing interagency cooperation for immigration control, the amendment proposes nothing new. There has always been some degree of cooperation between all agencies engaged in law enforcement. In fact, immigration officers and law enforcement officers at the state, county, and municipal level have often cooperated effectively in enforcing immigration law, even though this has been on an ad hoc basis, varying from state to state, district to district, and from official to official. A recent Arizona federal district court case held that local officials do have the authority to enforce the federal immigration laws, see *Gonzales* v. *City of Peoria, Arizona*, Civ. 78–6181

(D. Ariz., April 19, 1982). This authority originates primarily from state law. However, as the Supreme Court noted in *Testa* v. *Katt*, 330 U.S. 386, 389–91 (1947), there is historical precedent for delegating such authority to the states:

> The first Congress that convened after the Constitution was adopted conferred jurisdiction upon the state courts to enforce important federal civil laws, and succeeding Congresses conferred on the states jurisdiction over federal crimes and actions for penalties and forfeitures.
>
> Enforcement of federal laws by state courts did not go unchallenged. Violent public controversies existed throughout the first part of the Nineteenth Century until the 1860's concerning the extent of the unconstitutional supremacy of the Federal Government. During that period there were instances in which this Court and state courts broadly questioned the power and duty of state courts to exercise their jurisdiction to enforce United States civil and penal statutes or the power of the Federal Government to require them to do so. But after the fundamental issues over the extent of federal supremacy had been resolved by war, this Court took occasion in 1876 to review the phase of the controversy concerning the relationship of state courts to the Federal Government. *Claflin* v. *Houseman*, 93 U.S. 130. The opinion of a unanimous court in the case was strongly buttressed by historic references and persuasive reasoning. It repudiated the assumption that federal laws can be considered by the states as though they were laws emanating from a foreign sovereign. Its teaching is that the Constitution and laws passed pursuant to it are the supreme laws of the land, binding alike upon states, courts, and the people, "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

It is clearly constitutional for the federal government to enlist local cooperation in the area of immigration control. My proposal merely requires appropriate training if the local agencies assist INS, something which is presently occurring informally, however. without safeguards which proper training would provide.

The need for such an amendment is demonstrated by an incident which took place at Fort McCoy, Wisconsin. Fort McCoy was a resettlement center for Cuban entrants who arrived in the 1980 Mariel boatlift. The Wisconsin State Attorney General issued an opinion that state and local law enforcement officials would be subject to lawsuits for false arrest and imprisonment if they assisted INS during the period the Fort was used in this manner. The opinion relied on Griffin Bell's directive that only INS had the power to enforce the immigration laws. The need was further demonstrated during my visit to El Paso where I observed the tremendous burden placed upon our Border Patrol in trying to control that area.

Plainly what is really needed is to put interagency cooperation in the enforcing of immigration laws and standards on a firm statutory basis not subject to the interpretative whims of various administration officials. In this respect, this proposal could be a major step in

establishing a uniform system of immigration control while protecting the legitimate rights of aliens.

I firmly believe that the extent and nature of interagency cooperation can be carefully circumscribed in model agreements that would provide elaborate safeguards for civil rights and constitutional procedures. Moreover, graduate level police academy training courses can be devised to put this cooperation on the highest professional basis. No sensitive and sophisticated training now exists. With this type of training the ability of local law enforcement officials to assist the INS in a fair, humanitarian and sensitive fashion would be greatly enhanced.

Without consistent cooperation from local law enforcement agencies the Immigration Service cannot effectively enforce immigration laws within the United States. The Border Patrol Associations, both active and retired, along with the National Sheriffs Association and the Fraternal Order of Police firmly support this proposal.

Without revisions in the legalization and law enforcement sections of the bill I fear that we may not accomplish the goal of immigration control. It is my sincere hope that these concerns can be alleviated during floor consideration and we can vote out a comprehensive immigration reform package.

CHARLES E. GRASSLEY.

## ADDITIONAL VIEWS OF SENATOR LEAHY

I want to commend Senators Simpson and Byrd for coming up with a sensible and workable compromise on certification standards for the H–2 temporary worker program. Sometimes solutions to national problems do not work well in smaller, less complex places. The original language in S. 2222 may have dealt well with the national problems caused by the temporary worker program, but it might also have done much harm in areas like Vermont by creating a problem where there was none to begin with.

In Vermont, we have a vigorous apple industry that is reliant on obtaining skilled apple-pickers each fall. Over the years, the most reliable pickers have come from Jamaica, and the invitation to these temporary workers each year has become something close to a custom for both them and ourselves.

While the use of foreign temporary workers to displace Americans is a legitimate concern, and should remain so, the use of H–2's in Vermont has never come close to eliminating jobs for our own citizens. The effect of the bill's original language might have made it harder to use our traditional source of temporary help without first exhausting the possibility of finding American workers, even though located very far from Vermont. This change could have severely hurt our apple growers by making certification more difficult and expensive without benefiting workers anywhere.

The use of the language "workers who are able, willing, qualified, and who will be available at the time and at the place needed to perform the labor or services involved in the petition" makes clear that a national search need not be undertaken before seeking H–2 certification. Vermont apple growers have always been willing to hire those available in the area, but historically there has not been an able, willing, and qualified workforce available. The compromise language will provide assurance that the current standards will be maintained.

As part of the compromise, Senator Byrd agreed that his proposed language adding 8 U.S.C. 1184(c)(2)(A)(ii) to bar certification where the use of H–2 workers would adversely affect "wages and working conditions of workers who are similarly employed in the area of intended employment", should be changed back to "wages and working conditions of workers in the United States." This restores the present law.

As a result of this compromise, the availability criteria now refer to local availability, while the adverse impact criteria are national.

While it may be possible to envision conditions where the use of H–2 workers is so pervasive and continuous that even relatively distant workers would be adversely affected, one can state flatly that the use of temporary workers in Vermont, West Virginia, or similar locations will never have this effect. And while a casual reading of

the national adverse impact criteria might raise fears that the availability criteria are impliedly national as well, the express language of the compromise adding 8 U.S.C. 1184(c)(2)(A)(i) rules out any such interpretation.

The net effect of the overall compromise between Senators Simpson and Byrd is that both growers' concerns and national labor concerns are met in a thoughtful and effective way. I am pleased that in developing national criteria for the H–2 program, we have not created new problems where none existed earlier.

PATRICK J. LEAHY.

## MINORITY VIEWS OF SENATOR KENNEDY

I voted against this bill in the Committee because I have serious reservations about the measure in its present form. I sought to address these concerns in the amendments I offered in the Committee, and I intend to pursue them on the Senate floor.

The "Immigration Reform and Control Act of 1982" is the product of extensive study and lengthy hearings, and is based upon the landmark work of the Select Commission on Immigration and Refugee Policy. It represents a careful blend of conflicting views and some very difficult compromises. Nevertheless, I have serious reservations about this proposal in the following areas:

### EMPLOYER SANCTIONS

My overriding concern is that this bill must not become a vehicle for discriminatory action against Hispanic Americans and other minority groups. Immigrants and undocumented aliens must not become scapegoats for the serious problems our country faces today because of the Administration's failing economic policy. The recent nationwide raids by the Immigration and Naturalization Service—called "Operation Jobs"—have spread unnecessary fear and alarm in the Hispanic community, whose members feel that the very name given the raids suggest that migrants and undocumented aliens are being unfairly blamed by the Administration for the current high levels of unemployment in the United States.

We must be extremely cautious to avoid legislative action that raises the level of intolerance and discrimination in our society. The employer sanctions provisions present this danger, and I regret that the Committee did not accept my amendment that addresses this issue.

I have in the past supported legal sanctions against employers who knowingly hire undocumented aliens. I have done so as a matter of principle; it is wrong that the sanctions under current law fall solely on the undocumented aliens, not on employers who may be exploiting them. The government needs stronger enforcement tools to deal with the serious problem of employers who engage in a pattern and practice of hiring and exploiting undocumented aliens.

However, throughout the Select Commission's work, as well as during the extensive hearings of the Subcommittee on Immigration and Refugee Policy, two central objections were raised again and again: (1) that the proposed employer sanctions might result in discrimination against certain American workers, especially Hispanics and Asians; and (2) that employers would be unnecessarily burdened with paperwork in implementing the sanctions.

The history of immigration legislation in recent decades is that one an immigration law is enacted, Congress does not act again for many years. To assure that Congress will not ignore any discrimination that

arises in the implementation of employer sanctions, I believe an amendment should be added to provide the following two safeguards:

(1) The employer sanctions should be "sunsetted" after three years, so that Congress will be obliged to face this issue of discrimination squarely. If, as some fear, the sanctions become a pretext for discrimination, then they should expire—and properly so—unless Congress enacts new legislation with additional protections. If no discrimination materializes, then the sanctions will be continued.

(2) To insure that a fair and impartial study of the sanctions program is available to Congress, the General Accounting Office and the Commission on Civil Rights should be explicitly required in the statute to undertake an independent study of their implementation.

Part of the incentive to hire undocumented aliens is their willingness to accept substandard wages and working conditions. We must therefore intensify the enforcement of existing laws, including the minimum wage, the Fair Labor Standards Act, social security insurance, unemployment insurance, and Title VII of the Civil Rights Act. Vigorous and effective enforcement of these laws will reduce the incentive for employers to hire undocumented aliens. To accomplish this, I proposed authorizing additional funds to support these enforcement efforts while employer sanctions are implemented.

I hope the Senate will accept these reasonable proposals. If they are adopted, minorities in our society will be given a pledge that, if a pattern of discrimination emerges, Congress will not ignore it. Given the significant changes proposed by this legislation, this is the minimum assurance we should provide.

### LEGAL IMMIGRATION

In portions of this report there is an unintended implication that immigration to the United States is bad—that the numbers are too high, the impact is undesirable, and the consequences for the future are negative. These implications fly in the face of American history, and I reject them, as did the Select Commission on Immigration and Refugee Policy.

Illegal immigration must be controlled. But there is no evidence that the current levels of *legal* immigration are dangerous or contrary to our national interests. In fact, the Select Commission concluded:

> Based on its research and analysis, the Commission has found the contributions of immigrants to the U.S. society to be overwhelmingly positive. It believes that an immigrant admissions policy that facilitates the entry of qualified applicants is in the U.S. national interest. Whether measured by the number of Nobel Prize winners who have come to the United States as immigrants (30 percent of all U.S. Nobel laureates), the introductions of new concepts in music, art and literature or the industries built by immigrant labor, immigration has been of enormous benefit to this country.

The Commission also rejected the notion that current immigration is destabilizing or somehow threatening to our national unity. Although the admission of immigrants and refugees to the United States has increased numerically over the past decade, the proportion of foreign born citizens in the United States is dramatically lower than at any

previous point in our history. In 1890, the percentage of foreign born was 14.7; in 1970, it was down to a bare 4.7.

Veiled reference is also frequently made to the more than 800,000 immigrants and refugees who entered the United States in 1980. But all who use that figure—often rounding it off to a neat one million—do so knowing it was an extraordinarily unusual year due to the admission of large numbers of Indochinese refugees and the influx of Cubans and Haitians. The numbers before and since are much lower, and will not reach the 1980 level again in the foreseeable future.

We must avoid scare tactics and scare statistics designed to feed false fears.

PREFERENCES FOR IMMIGRATION

The bill makes a number of unfortunate and unwise changes in the existing immigration preference system. These changes will jeopardize our country's historic commitment to family reunion as the principal goal of our immigration policy.

For the first time, this bill places the admission of the immediate relatives of United States citizens—spouses, children and parents—under a rigid annual ceiling. In addition, the current 5th preference for the admission of brothers and sisters of United States citizens is eliminated entirely.

These changes are contrary to the recommendations of the Select Commission as well as to the views of every recent Administration—Republican or Democratic. I agree with the Reagan Administration that they compromise our traditional concern for family reunification.

Throughout our history we have never placed a ceiling on the admission of immediate relatives, and there is no valid reason for doing so now. Under the terms of the bill, immediate relatives are still given the highest priority; but if their numbers increase in the years ahead, other family reunion preferences will be cut back.

We should also restore the 5th preference, at least for unmarried brothers and sisters. This would amount to only 17,000 persons a year—hardly a significant number—yet it represents an essential element in the family reunification goals of several communities in our society.

JUDICIAL REVIEW OF ASYLUM CLASS ACTIONS

Some very important reforms of the asylum adjudication process have been achieved in this legislation and I support them. However, I regret that the Committee limited judicial review of the asylum process without granting full independence to the new Immigration Board, as originally proposed when the bill was introduced. As a result, the Committee bill does not achieve the autonomy the asylum process needs in order to assure fair and non-political adjudication of asylum claims. In this situation, the elimination of judicial review is particularly objectionable, since it has been the only avenue for challenging discriminatory decisions.

There are valid arguments for limiting judicial review of individual asylum applications under the new procedures, however, there is no justification for denying judicial review to asylum class actions, where there is an alleged pattern and practice of discrimination in the processing of asylum claims.

This limited review will not open up the system to a burdensome case-by-case judicial review; but it will help assure that the new im-

migration judges and officers respect due process and strictly follow the laws that Congress enacts. Such a requirement is essential, since the bill grants authority to the Attorney General to appoint the immigration judges and the new Board. We must assure both the appearance and the reality of fairness in the asylum adjudication process by giving some recourse to the courts if a class of cases is questioned. Habeas corpus jurisdiction is not sufficient to achieve this goal, since the bill also limits this remedy to constitutional, not statutory, habeas corpus.

TEMPORARY FOREIGN WORKERS

I continue to support the unanimous vote of the Select Commission and the actions of the Committee in rejecting the establishment of an expanded temporary foreign worker program. Adoption of the legalization program and implementation of the new immigration system will result in the legal admission of additional immigrants and an adjustment in the status of undocumented aliens already working here.

Until the impact of these changes is assessed, there is no valid justification for a large new temporary foreign worker program. Any such program would have serious consequences for American labor and American wages. The Committee has acted responsibly in rejecting calls for a new "bracero" program.

The existing need for temporary workers can be met by the H–2 visa program. The Committee has acted to make this program more flexible, but we must be extremely cautious not to allow these changes to undermine labor standards or to depress wages. Employers seeking H–2 workers must be required to seek American workers first, and we should plan the elimination of this program in the future, not its expansion.

FOREIGN STUDENTS

Under the provisions of this bill, no foreign students will be able to adjust their immigration status without first leaving the United States for two years, unless they marry an American citizen. I believe this provision is too restrictive, especially in areas such as engineering, computer sciences, and other areas of high technology, where the United States is facing critical shortages in industry and in teaching.

The Committee bill should be amended to permit students of exceptional merit and ability—who are participating in essential academic, professional and industrial programs— to remain in this country without leaving for two years. To do otherwise is contrary to our national interests. It also ignores the current reality that exceptionally qualified students do not return to their homes in the Third World or elsewhere; they simply move to Japan or Europe and use their skills to help those nations compete against the United States. It makes no sense, when our own faculties and firms are starved for scientific talent, for the United States to train engineers or computer specialists at M.I.T. or Berkeley for jobs in Tokyo or Bonn.

LEGALIZATION PROGRAM

The Select Commission voted unanimously to recommend that a flexible and generous program be established to adjust the status of

undocumented aliens already leading productive lives in the United States. It did so because "the existence of a large undocumented/illegal migrant population should not be tolerated"—and because "the costs to society of permitting a large group of persons to live in illegal, second-class status are enormous." The Commission recognized that mass deportations were out of the question, for both legal and humanitarian reasons; such deportations would undermine new enforcement programs and would waste available enforcement resources.

For a legalizaton program to work, it must be comprehensive, it must reach out to as many undocumented aliens as possible, and it must have as few exceptions as possible. It is for this reason that I am gratified the Committee voted to support my amendment to make the legalization program more inclusive by moving the cut-off date forward from January 1, 1980 to January 1, 1982. This will mean that as new enforcement programs are implemented, a large, subterranean, exploited class of people will not be left in limbo; it helps to resolve the issue of millions of undocumented aliens in our midst.

Although the legalization program is clearly a crucial element of immigration reform, concern has been expressed over the impact it may have on state and local social service programs. According to the research of the Select Commission and others on the characteristics of the undocumented alien population, these concerns appear to be exaggerated. Undocumented aliens are here to work, not to seek welfare; they are in many respects undocumented taxpayers contributing to the communities in which they live without the benefits of those taxes.

Nonetheless, should there develop clear evidence after the one-year legalization program that a significant financial burden has developed on state and local programs, the Federal Government should, of course, respond to any financial burdens imposed by this legislation.

### INTERNATIONAL COOPERATION

One of the most important recommendations of the Select Commission was that the United States should become more actively involved in efforts to achieve international cooperation on world migration and refugee problems.

I strongly endorsed the Commission's recommendations that the United States should expand bilateral consultations to promote cooperation on migration issues in the Western Hemisphere—especially with our neighbors, Mexico and Canada. These two nations deserve special consideration in our policies, and I commend Senator Simpson for his personal efforts to meet with the leaders of Mexico during the development of this legislation.

However, this bill is moving forward without adequate consultations by the Executive Branch with our neighbors. If we are to achieve genuine cooperation we must consult in advance, before changes in our immigration policies are set.

Unilateral policies, like fences, do not always make good neighbors. Immigration is not only a domestic issue; it is a bilateral and international concern as well. During our consideration of this bill we must give greater weight to this concern and the Administration must give greater evidence that it, too, is pursuing it.

## CONCLUSION

Immigration is both America's past and future. It demonstrates confidence in the continuing promise of our land. It honors our traditional concern for family reunion. It strengthens the economic and cultural life of our country. And it assures that America will always be a home for the homeless.

The Select Commission and the members of this Committee understood the urgent need for immigration reform. Our current immigration laws and policies are out of date; they are inadequate to handle world migration pressures.

As ranking minority member of the Subcommittee on Immigration and Refugee Policy, I have been honored to work closely with the Chairman, Senator Simpson, in a bipartisan effort to achieve genuine reforms, based upon reason, fairness, and careful study. We have attempted to review immigration policy in light of America's best interest, yet with full regard for our immigrant heritage and our humanitarian traditions. I know from many hours of hearings, and from the two-year effort of the Select Commission, how hard Senator Simpson has personally worked to achieve this difficult task.

I pledge my continued cooperation to enact a bill that reflects our shared goals. We have come a long way—but we still have some distance to go.

We have rejected—as we must continue to reject—calls for harsh and discriminatory enforcement of our immigration laws, including the deputizing of local police officers to enforce our complex immigration policies. We have rejected cruel and racist calls against immigration. We have rejected efforts to drastically reduce our annual immigration quotas and to restrict the admission of refugees.

But we must also assure minorities in our society that no new discrimination will result from any provision in this bill. If we can give this assurance in clear and unmistakable terms—and if we can strengthen the bill in other areas—I believe it should and will become law, and will be a clear step toward immigration reform.

EDWARD M. KENNEDY.

## ATTACHMENT A—SELECTED QUOTATIONS

### A. COMMENTS FROM HEARINGS ON S. 2222

*Employer sanctions and worker authorization system*

"It has never seemed to me, and does not seem to me now, that it is feasible to achieve a system that can secure respect for an observance of our immigration laws that does not rest upon enforcement through the responsibility of the employer. The employer, in turn, cannot fairly be charged with that responsibility unless there is available some means of obtaining confident assurance that an applicant for a job is legally entitled to be here."—Former Attorney General Elliot Richardson, S. 2222 hearings, 30. (4/1/82)

". . . I do not think the verification process, either initially or through a technologically improved and safeguarded universal system is very great on the employer. So, I think that the regulatory or red tape argument is hollow.

"I think it is also true that if we are dependent upon investigation and prosecution to enforce the law exclusively throughout the country, then we would be, I think, very reluctant to impose employer sanctions.

"But fortunately, most of the law in the United States—both state law and federal law—is self-enforcing. Most of the citizens of the country obey the law, and have great respect for the law across the board . . ."—Former Attorney General Benjamin Civiletti, S. 2222 hearings, 34. (4/1/82)

"The Department of Labor strongly favors employer sanctions. We believe they are a critical step toward improving the employment opportunities of our most vulnerable workers—the low-skilled American and legal immigrant workers."—Malcolm Lovell, Undersecretary of Labor, Department of Labor, S. 2222 hearings, 74. (4/20/82)

"We endorse and support the basic approach of the Simpson-Mazzoli bill on employer sanctions and penalties on employers who hire illegal aliens; it is sound and workable."—Lane Kirkland, President, AFL–CIO, S. 2222 hearings, 113. (4/20/82)

"We have strongly supported . . . the inclusion in this bill of penalties for employers who hire illegal aliens."—Harvey Ruvin, Commissioner, Dade County, Florida for National Association of Counties, S. 2222 hearings, 147. (4/20/82)

"We believe the sanctions provision to be an integral part of a balanced and comprehensive reform."—Russell L. Williams, President, Agricultural Producers, S. 2222 hearings, 174. (4/20/82)

"The bill's proposed sanctions against employers will drastically reduce the number of undocumented workers in industry and agriculture."—James G. Van Maren, California Chamber of Commerce, S. 2222 hearings, 188. (4/20/82)

"The Houston Chamber of Commerce recognizes the need for employer sanctions as a realistic means for discouraging the employment of illegal aliens . . ."—Louie Welch, President, Houston Chamber of Commerce, S. 2222 hearings, 194. (4/20/82)

"NAACP has long been in favor of employer sanctions."—Althea Simmons, NAACP, Washington, D.C., S. 2222 hearings, 150. (4/20/82)

"To discourage the employment of illegal aliens and curtail rising illegal immigration, the League supports the imposition of civil penalties on those employers who knowingly and willingly employ undocumented aliens.

"Additionally, criminal penalties should be imposed upon those employers again knowingly engaging in patterns and practices of employing undocumented aliens.

"Employer sanctions should be implemented as one focal point in a total program aimed at eliminating illegal immigration, for we believe that equal opportunity for all Americans is indeed adversely affected by the massive numbers of illegal aliens employed in this country."—Maudine Cooper, Vice President, Washington Operations, National Urban League, Hearing on Employer Sanctions, 158. (9/30/81)

". . . I thought your proposal of a phase-in period of three years, while regular documents of identification could be used for verification, was sound—sound because we could perhaps further develop the technology necessary for a card, or explore what is loosely described in different ways as the telephone response or central computer verification process without the necessity of having individual cards, to call in verification, something similar to what is now used for credit in some instances.

"And at the same time it would be a period in which, with employer sanctions in place, we could allay the fears that an identification card or a universal verification system would be a threat to misuse of civil liberties and we could provide, as we developed it, the strong, rigid, and necessary safeguards which would form a basis for reducing that perception."—Former Attorney General Benjamin Civiletti, S. 2222 hearings, 29. (4/1/82)

"The bill we are discussing today constitutes the most significant effort that has ever been made to control that stream. The bill is significant because it focuses the governmental powers on the people whom the government can effectively act against, the people who seek to employ these aliens. Focusing attention on the employer instead of the alien should do the job, since the employer can't move on; he can always be found."—James G. Van Maren, Agriculture Dept., California Chamber of Commerce, S. 2222 hearings, 188. (4/20/82)

*Border enforcement and asylum adjudication*

"The bill recognizes the need to improve our border enforcement and to facilitate the deportation process—again, however, keeping fairness in mind. No one can be satisfied with an asylum process which takes years or an immigration status which results solely from endless hearings. Increasing both the quantity and quality of judges to hear deportation and asylum cases and curtailing the multiple avenues for appeal and review, as this bill proposes, are some sound methods to cure these ills."—Former Attorney General Benjamin Civiletti, S. 2222 hearings, 22. (4/1/82)

"With regard to border enforcement, NACo strongly supports provisions in this bill, and we are very glad to see them in here, which call for an increase in the border and interior enforcement efforts to curb illegal migrations. This certainly should be tied to the legalization issue as well."—Harvey Ruvin, Commissioner, Dade County, Florida, S. 2222 hearings, 148. (4/20/82)

*Overall ceiling*

"The Simpson-Mazzoli bill understands the need for control. It sets an overall limit on the number of immigrants to this country, and while I am sure that the actual number can and will be debated, the figure of 425,000 is realistic."—Former Attorney General Benjamin Civiletti, S. 2222 hearings. (4/1/82)

"The Administration believes that it is essential to our freedom and prosperity as a nation today that we maintain as well as set limitations to immigration. The continuing flow of increased numbers of undocumented aliens into our labor market makes reform of our immigration laws pressing and long overdue.

"I applaud your considerable efforts to make that reform possible."—Malcolm Lovell, Under Secretary of Labor, S. 2222 hearings, 73. (4/20/82)

*H–2 temporary worker visas*

"We believe that the Simpson-Mazzoli H–2 proposal aims at a reasonable balance between the interests of U.S. workers and the needs of agricultural employers."—Malcolm Lovell, Under Secretary of Labor, Department of Labor, S. 2222 hearings, 76. (4/20/82)

*Legalization*

"The bill would integrate into our society many thousands of our illegal aliens who now live in fear of exposure to government authorities. Once legalized, these people can obtain better jobs and become solid participating members of the community."—Deane Dana, Los Angeles County Board of Supervisors, S. 2222 hearings, 153. (4/20/82)

"We support an amnesty program for those undocumented workers who are currently in the country."—Althea Simmons, NAACP, Washington, D.C., S. 2222 hearings, 151. (4/1/82)

"I would like to congratulate the Subcommittee for proposing a very generous legalization program."—Norman Lau Kee, US-Asia Institute, S. 2222 hearings, 153. (4/1/82)

"The reason that we are enthused about the bill is because we have been concerned about legalizing our folks in this country for a long time."—José Cano, National Chairman, American G.I. Forum, S. 2222 hearings, 120. (4/1/82)

"We are particularly pleased with the legalization part of the proposal."—Raul Yzaguirre, President, National Council of La Raza, S. 2222 hearings, 108. (4/1/82)

B. EDITORIAL COMMENTS ON S. 2222

*General*

". . . the Simpson-Mazzoli bill must be seen as the most important step thus far toward a sensible, fair revision of the nation's chaotic immigration policies."—Miami Herald, March 22, 1982.

"Control and compassion should be the twin objectives of American immigration policy, and legislation recently introduced by Senator Alan Simpson and Representative Romano Mazzoli has these two goals in mind."—The Washington Post, March 18, 1982.

". . . a comprehensive immigration reform bill that is the sanest and best-balanced proposal yet made to deal with a complex and emotional issue—illegal immigration to the United States."—Los Angeles Times, March 21, 1982.

"A sensible, fair, workable, bipartisan immigration bill has finally surfaced in Washington. . . ."—Chicago Sun-Times, March 22, 1982.

"A Republican Senator and a Democratic Congressman joined . . . to introduce a rare of piece of legislation: a responsible immigration bill."

". . . the Simpson-Mazzoli bill is at once tough, fair and humane."

"Senator Simpson and Representative Mazzoli have balanced the ideas of the Administration and a blue-ribbon immigration commission of labor, employers and minority groups; of different regions; of other countries. The resulting bill is a genuine political achievement, aligning Congress with the best, instead of the worst in the American imm ation tradition."—The New York Times, March 18, 1982.

"The Reagan Administration, Congress and not least of all the American people—at last have in hand an immigration bill that deserves swift and decisive enactment."—The Christian Science Monitor, April 6, 1982.

*Asylum adjudication*

". . . the bill offers a streamlined process for promptly resolving claims for political asylum."—Miami Herald, March 22, 1982.

*Employer sanctions and worker authorization system*

"What makes the Simpson-Mazzoli bill so promising is that it combines sanctions against employers for hiring illegal aliens with a basically equitable method of dealing with illegals already living within the U.S."—The Christian Science Monitor, April 6, 1982.

"The Simpson-Mazzoli bill . . . calls for the gradual development of a limited, reasonable process of identification."—New York Times, March 18, 1982.

*Legalization*

"The premise of the Simpson-Mazzoli amnesty plan is sound. It seeks to move aliens into the mainstream of American life promptly after they are found fit for residence."—Miami Herald, March 22, 1982.

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